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The question as to the constitutionality of acts prohibiting barbering on Sunday has recently come before three courts with different results. The Supreme Court of Missouri, in the case of State v. Granneman, held invalid an act making it a misdemeanor for any person to carry on the business of barbering on Sunday, upon the ground that it is in derogation of the constitution prohibiting the passage of local or special laws. The court while conceding the power of the legislature to pass a general law, compelling the observance of Sunday as a day of rest, applicable alike to all classes and kinds of labor, denied such power as to one particular kind of labor, holding it to be special legislation prohibited by the organic law. So, also, the Supreme Court of Illinois, in the later case of Eden v. The People, declared the act of the legislature which provides that it should be unlawful for any one to keep open any barber shop, or carry on the business of shaving, hair cutting, or any kind of tonsorial work on Sunday, to be unconstitutional, upon much the same ground as the Missouri court, viz., that the act in question was not binding upon all the members of the community. "The act," says the court, affects one class of laborers and one class only. The merchant and his clerks, the restaurant with its employees, the clothing house, the blacksmith, the livery stable, the street-car lines, and the people engaged in every other branch of business, are each and all allowed to open their respective places of business on Sunday and transact their ordinary business if they desire, but the barber and he alone is requested to close his place of business. The barber is thus deprived of property without due process of law in direct violation of the constitution of the United States and of this State. Moreover, if the merchant, the butcher, the druggist, and other trades and callings are allowed to open their places of business and carry on their respective avocations seven days of the week, upon what principle can it be held that a person who may be engaged in the business of barbering may not do the same thing? Why should a discrimination be made against that calling and that alone?"

On the other hand the Court of Appeals of New York has recently, in the case of People v. Havnor, declared constitutional an act of this character. They hold that the legislature has the constitutional right to prohibit the business of barbering on Sunday and to discriminate as to hours and locality with respect thereto; that the exercise of the police power by the legislature is not in conflict with the constitution when the real object of the statute has a reasonable connection with the welfare of the public. When thus exercised, even if the effect is to interfere to some extent with the use of property, or the prosecution of a lawful pursuit, it is not regarded as an appropriation of property or an encroachment upon liberty, because the preservation of order and the promotion of the general welfare, essential to organized society, of necessity involve some sacrifice of natural rights.

The court has little to say upon the point upon which the Missouri and Illinois cases were decided, though the New York court evidently regarded it as untenable. Indeed, they not only held valid an act applicable to one calling but which was in terms made applicable to certain localities only within the State. Three of the members of the court dissent. The question suggested by these cases, as to what is "special" legislation, is not by any means clear of solution. In opposition to the view of the Missouri and Illinois courts, it is said that the matter of applying the Sunday law to a particular trade or calling is one of legislative discretion, and does not furnish a proper occasion for interference by the judiciary. It is quite clear that the making of laws has been intrusted to the legislative branch of the government, and so long as the actions of the legislature are such that one could conceive them to have been actuated by some rational public reason, the legislature must be deemed to have acted within its province. Applying this test to the subject of special legislation "can it be said," asks an eastern law exchange commenting upon this subject, "for example, that a reasonable man could not by any possibility have seen fit to apply a Sun-

day closing rule to barber shops without at the same time applying it to other trades? Some rational reason must be found, it is said, for singling out barber shops; another way of putting it is to say that some rational reason must be shown why the legislature did not go farther. It would not be argued that the legislature must go, if at all, to the full length of closing all shops, including that of the apothecary. Some line must be drawn; and it is conceivable that the legislature may from their present knowledge feel incompetent to draw that line. They may feel sure that barbers should fall on the prohibited side, and yet be in just doubt as to other occupations. Can it be said, then, that the legislature might not have had a reasonable ground for declining to carry their prohibition to its utmost extent? If not, then there is a conceivable reason why it should have stopped where it did. If, whenever a mischief arose in any particular instance, it were necessary for the legislature to consider all possible instances to which they might think the mischief applied, legislation would indeed be a slow process."

NOTES OF RECENT DECISIONS.

RAILROAD COMPANY—CONTROL OF PARALLEL LINES—VESTED RIGHTS.—The Supreme Court of the United States decides, in Pearsall v. Great Northern Ry. Co., 16 S. C. Rep. 705, that a contract by which one railroad agrees to guaranty the bonds of a parallel, competing road, in consideration of which half the stock of the latter road is to be transferred to the stockholders of the former road, or to a trustee for their use, is within Laws Minn. 1874, ch. 29, providing that no railroad shall consolidate with, lease, purchase, or in any way control, any parallel or competing line and that a general power given a railroad by its charter, to consolidate with, purchase, lease, or acquire the stock of other roads, may, while it remains unexecuted, be limited by the legislature, without impairing any vested right, to cases where the other roads are not parallel or competing. Mr. Justice Field and Mr. Justice Brewer dissent.

CHATTEL MORTGAGE — GROWING CROPS — RIGHTS OF MORTGAGOR.—It is held by the Supreme Court of California, in Simpson v. Ferguson, 44 Pac. Rep. 484, that the statute providing the manner of mortgaging growing crops, is intended to be exclusive of other modes, and is a declaration of legislative intent that such property shall be regarded as a chattel. They also declare that while growing crops are sometimes, and for some purposes, a part of the realty, as between a mortgagor of the land and the mortgagee, the mortgagor is the owner of the crops growing thereon, free from any lien of the mortgage, and with full power to dispose of or mortgage the same, until he is divested of possession of the land by foreclosure proceedings, either by a receiver, or under final decree. The following is from the opinion of the court:

It is urged that section 2955 and following of the Civil Code, providing for the manner of mortgaging growing crops, do not establish an exclusive method; that as this class of property may under some conditions be regarded as realty, and under other conditions as personalty, it must follow that under corresponding conditions the property may be the subject of a real estate mortgage, or a chattel mortgage, according to the circumstances; and that plaintiff having a valid mortgage upon the land, with its rents, issues and profits, this gives him a valid lien upon the growing crops, as effectually, to the same extent, for all purposes, as if executed with the formalities required in the case of a crop mortgage. We are unable to coincide in this view. In the first place, we think it quite manifest, from the provisions of the Code in question that the legislature intended thereby to provide an exclusive mode for the mortgaging of growing crops, and intended to declare that for such purposes this species of property shall be regarded as a chattel. There is nothing in the statute to indicate that it was not intended to cover every case of a mortgage given upon that class of property. In the second place, while it is perfectly true that growing crops may be either personal or real property, according to circumstances, and while, as suggested by respondent, a mortgage of the land gives a lien upon everything that would pass by a grant of the land, which includes crops growing thereon, it is nevertheless well established that such lien, so far as the growing crops are concerned, is limited in its effect to the crops growing upon and unsevered from the land at the time of foreclosure. It does not vest the mortgagee with a right to the crops grown intermediate the giving of the mortgage and the foreclosure thereof. Until the latter event, where, as in this State, the mortgage creates no estate in the mortgagee, but confers only a lien upon the property, the mortgagor is entitled to such crops, with the same absolute right and dominion over them as if the mortgage did not exist. This doctrine is thoroughly well settled, with no considerable diversity upon the subject among text writers or the courts. The general rule is well stated in Mr. Jones' work on Mortgages (5th Ed.), § 670, where it is said: "So long as the mortgagor is allowed to remain in possession, he is entitled to receive and apply to his own use the income and profits of the mortgaged estate. His contract is to pay interest, and not rent.

Although the mortgagee may have the right to take possession upon a breach of the condition, if he does not exercise this right he cannot claim the profits. Upon a bill in equity to obtain foreclosure and sale, he may, in proper cases, apply for the appointment of a receiver to take for his benefit the earnings of the property. He is then confined to the rents and profits accruing during the pendency of the suit. If he neglects to apply for a receiver, the final decree, if silent upon this subject, does not affect the mortgagor's possession or right to the earnings in the meantime. It is only after sale under the decree, except where statutes provide otherwise, that the mortgagor is wholly divested of title, and consequently of right to possession. Unless restrained by the terms of the mortgage, the mortgagor in possession may work mines or quarries upon the mortgaged property, and whatever he severs from the realty becomes unincumbered personalty, and his own property. Even if the rents and profits of the mortgaged property are expressly pledged for the security of the mortgage debt, with the right in the mortgagee to take possession upon default, the mortgagee is not entitled to the rents and profits until he takes actual possession, or until possession is taken in his behalf by a receiver." In Teal v. Walker, 111 U. S. 242, 4 Sup. Ct. Rep. 420, the authorities upon this subject are exhaustively reviewed, and it is there held (quoting from the syllabus): "A conveyance to a trustee, absolute on its face, but with an instrument of defeasance showing that it is to secure payment of a debt due to a third party, is a mortgage, and is subject to the rule that a mortgagee is not entitled to the rents and profits until he acquires actual possession. The rule that the mortgagee is not entitled to the rents and profits before actual possession applies even when the mortgagor covenants in the mortgage to surrender the mortgaged property on default in payment of the debt, and nevertheless refuses to deliver it after default, and drives the trustee to his action to enforce the trust." In that case the court, stating the doctrine as laid down in Gilman v. Telegraph Co., 91 U. S. 603, say: "It was declared by this court that where a railroad company executed a mortgage to trustees on its property and franchise, 'together with the tolls, rents and profits to be had, gained or levied thereupon,' to secure the payment of bonds issued by it, the trustees in behalf of the creditors were not entitled to the tolls and profits of the road, even after condition broken and the filing of a bill to foreclose the mortgage, they not having taken possession or had a receiver appointed." Chancellor Kent states the rule thus: "The mortgagor has a right to lease, sell, and in every respect to deal with the mortgaged premises as owner, so long as he is permitted to remain in possession, and so long as it is understood and held that every person taking under him takes subject to all the rights of the mortgagee, unimpaired and unaffected. Nor is he liable for rents, and the mortgagee must recover possession by regular entry by suit, before he can treat the mortgagor, or the person holding under him, as a trespasser." 4 Kent, Comm. 157. In the case of Sexton v. Breese (N. Y. App.), 32 N. E. Rep. 133, where the mortgagor of the land, subsequent to the giving of the mortgage, but before it was due, sold a growing crop of wheat raised on the land, and, subsequently to such sale, delivered possession of the land to the mortgagee thereof, it was held that the vendee of the crop was entitled to the same, as against the mortgagee, and it is said: "If we assume that the plaintiff was in possession of the land as by an actual surrender from the mortgagor, his rights in its use were subject to the previous disposition made of the growing crop of grain by the owner of the land. He had planted the crop, and it was perfectly competent for him to dispose of it while he held the title to the land. Though, in a sense, a growing crop of grain is a part of the real estate, it nevertheless possesses the characteristics of a chattel, and is salable and transferable as other personal property is, and may be taken upon execution, and sold in discharge of a judgment debt." In West v. Conant, 100 Cal. 231, 34 Pac. Rep. 705, where the mortgagor remained in possession of the mortgaged land after the foreclosure sale, and received all the rents, issues and profits therefrom, it was held that he was entitled to hold such premises until the expiration of the period of redemption, and that the purchaser at the sale was not entitled to a receiver to take possession of crops of hay and grain growing upon the land intermediate the sale and the expiration of the equity of redemption. In the recent case of Freeman v. Campbell, 42 Pac. Rep. 35, decided by this court, where the conveyance from Anderson, plaintiff's intestate, to defendant, was held to be a mortgage, and where defendant had taken possession of the land and received the rents thereof, it was held that the administrator of Anderson, the mortgagor, was entitled to recover the amount of the rents received by Campbell as money had and received, belonging to the estate, and it is there said: "The claim that the mortgage included the rents, as well as the land, does not aid the appellant, as under section 2927, Civ. Code, he had no right to the possession of the mortgaged security. His right to the rents was no greater than that to the land. A mortgage is a contract by which specific property is hypothecated (Civ. Code, § 2920), but such contract is independent of the fact of possession, and does not of itself confer the right of possession. If a receiver had been appointed to take possession of the mortgaged premises, the authority of that officer would have included the right to take possession of the rents, as well as the land, and the rents would then have been in the custody of the court, and subject to its direction; but, in the absence of some intervention by the court, the mortgagor has the right to these rents, even though they are included in the instrument of mortgage, and the mortgagee's right to them is limited to their disposition by the court in the judgment, or subsequent thereto." From the principles here declared, it follows that the mortgagor being in possession of the land, and entitled as of right to the crops grown thereon, it was competent for him to sell or mortgage, or otherwise dispose of them, and convey good title thereto, as against the mortgagee of the land or his assigns, at any time prior to the foreclosure of the latter's mortgage.

It is claimed by respondent that the cases of Montgomery v. Merrill, 65 Cal. 432, 4 Pac. Rep. 414, and Treat v. Dorman, 100 Cal. 623, 35 Pac. Rep. 86, are in conflict with the doctrine that growing crops can only be mortgaged with the formalities prescribed for the execution of chattel mortgages. But we do not so regard them.

REFORMS IN THE LAW OF NEWSPAPER LIBEL.

The publisher of a newspaper possesses no immunity from liability in publishing a libel other or different from any other person.

The law makes no distinction between him and any private person who may publish an article in a newspaper, or other printed form, and if either abuses the right to publish his sentiments on any subject, and upon any occasion, he must defend himself upon the same legal ground.[1] The publisher of a newspaper is liable for everything appearing in its columns,[2] though he was ignorant or even forbade the publication.[3] He is liable though he believed it to be true and acted in good faith.[4] The proprietor, the editor, the printer and the publisher are liable to be sued either separately or together.[5] Every sale or delivery of a libel is a fresh publication, for which a civil action lies against the seller, and the *onus* is on him to prove that he was ignorant of its contents.[6] The proprietor is liable to a party libeled, notwithstanding the libel is accompanied with the name of the author,[7] and he may be sued without joining the writer as a defendant.[8] So an editor is not bound to give up the name of his correspondent, and if he refuses to do so no blame will attach to him, and the plaintiff must be content to sue the proprietor of the paper.[9] Nor can the proprietor of a newspaper, who was made liable for the publication of a libel and mulcted, sue the writer for contribution, though the libel may be inserted by the latter without the knowledge or consent of the former.[10] Editors have the full liberty to criticise the conduct and motive of public men and the measure and policy of government,[11] but the discussion must be fair and legitimate. If one goes out of his way to asperse the personal character of a public man, and to ascribe to him base and corrupt motives, he must do so at his peril, and must either prove the truth of what he says or answer in damages to the party injured.[12] The same rule is applied to candidates for office. Editors may publish what they please in relation to the character and qualifications of the candidate, but they are responsible for the truth of all they so publish.[13] What is true may be published of any man, public or private, and proof of the truth of the charge under a plea of justification will be a complete defense in a civil action.[14] Proprietors of newspapers are not to be punished for publishing a fair, full and true report of judicial proceedings, except on actual proof of malice in making the report.[15] The reason for this rule is that the public have a right to know what takes place in a court of justice, and unless the proceedings are of an immoral, blasphemous, or indecent character, or accompanied with defamatory observations or comments, the publication is privileged.[16] Though the publication of such proceedings may be to the disadvantage of the particular individual concerned, yet it is of vast importance to the public that the proceedings of courts of justice should be universally known. The general advantage to the country in having these proceedings made public more than counterbalances the inconveniences to the private person whose conduct may be the subject of such proceedings.[17] So every impartial and accurate report of any proceeding in a public law court is privileged, unless the court has itself prohibited the publication or the subject-matter of the trial be unfit for publication.[18] If the publication is accompanied with defamatory comments it becomes illegal and libelous.[19]

[1] Brouson v. Bruce, 59 Mich. 467.

[2] Buckley v. Knapp, 48 Mo. 152; Rex v. Walter, 3 Esp. 21; Story v. Wallace, 60 Ill. 51; Scripps v. Reilly, 38 Mich. 10.

[3] Storey v. Wallace, 60 Ill. 51; Andrews v. Wells, 7 John. 260, 5 Am. Dec. 267; Dunn v. Hall, 1 Ind. 344; Perrett v. Times Newspaper, 25 La. Ann. 170; Commonwealth v. Morgan, 107 Mass. 199; Curtis v. Mussey, 6 Gray (Mass.), 260; Detroit Post Co. v. McArthur, 16 Mich. 447; Scripps v. Reilly, 38 Mich. 10.

[4] Littlejohn v. Greely, 13 Abb. (N. Y.) Pr. 41.

[5] Ludwig v. Cramer, 53 Wis. 193; R. v. Dover, 6 How. St. Tr. 546.

[6] Staub v. Van Benthuysen, 36 La. Ann. 467.

[7] Doyle v. Lyon, 10 Johnson, 447, 6 Am. Dec. 346.

[8] Ludwig v. Cramer, 53 Wis. 193.

[9] Harle v. Catherall, 14 L. Tr. 802.

[10] Colburn v. Patmore, 1 Cromp. M. & R. 73.

[11] Negley v. Farrow, 60 Md. 176.

[12] Hamilton v. Eno, 81 N. Y. 116; Negley v. Farrow, 60 Md. 176; Shadden v. McElwee, 86 Tenn. 146; State v. Schmidt (N. J.), 9 Atl. Rep. 774.

[13] King v. Root, 4 Wend. (N. Y.) 113, 21 Am. Dec. 102; Wheaton v. Beecher (Mich.), 33 N. W. Rep. 503.

[14] Gathercole v. Miall, 15 M. & W. 321.

[15] Commonwealth v. Blanding, 3 Pick. (Mass.) 304; Thompson v. Powning, 15 Nev. 202; Ackerman v. Jones, 5 J. & Sp. (N. Y.) 42; Hawkins v. Globe Printing Co., 10 Mo. App. 174; Cincinnati, etc. Co. v. Timberlake, 10 Ohio St. 548; Stanley v. Webb, 4 Sandf. Sup. Ct. 21; Forbes v. Johnson, 11 B. Mon. 48; Davison v. Duncan, 7 E. & B. 231; Wason v. Walter, 4 L. R. Q. B. 82.

[16] Thompson v. Powning, 15 Nev. 202.

[17] Cowley v. Pulsifer, 137 Mass. 396, 50 Am. Rep. 318; Rex v. Wright, 8 T. R. 293; Davison v. Duncan, 7 El. & Bl. 229; Commonwealth v. Blanding, 3 Pick. (Mass.) 304.

[18] Odger's L. & S. 248.

[19] Commonwealth v. Blanding, 3 Pick. (Mass.) 304;

So it is libelous to publish a pleading of one party in a newspaper or it would seem the whole proceedings before the matter has come to be heard.[20] An accurate report of a portion of a judicial proceeding will still be privileged if it does not purport to be a report of the whole. Thus when the trial lasts more than one day, reports published in the newspapers each morning are protected. When a man publishes only a portion, when it is in his power to publish the whole, this fragmentary publication will be evidence of malice, if the part selected and published tell more against the plaintiff than a report of the whole trial would have done.[21] The privilege attaching to fair and accurate reports may be rebutted by proof of actual malice.[22] The reports of judicial proceedings, although fair and accurate, are not privileged and are indeed illegal, when the court has itself prohibited the publication, as it frequently did in former days.[23] Where the subject-matter of the trial is an obscene or blasphemous libel, or where for any other reason the proceedings are unfit for publication, it is not justifiable to publish even a fair and accurate report of such proceedings; such a report will be indictable as a criminal libel;[24] nor is the publication of proceedings before a grand jury privileged.[25]

The common law remedy allowed to a person injured by a libel: First, special damages for every injury of a pecuniary nature resulting from the wrong, which he had to both plead and prove; and second, general damages to his standing and reputation, which the law presumed without proof from the fact of the publication of libel actionable *per se*. Malice is the gist of every action for libel; either malice in fact consisting of improper and unjustifiable motives, or constructive malice, which the law presumed without proof from the fact of the falsity of the publication. Evidence of intention, that is, of the absence of malice in fact, was always admissible when the communication was privileged in justification, and when it was not proven in mitigation of damages. A retraction was always admissible in mitigation. When a newspaper article is libelous and does not appear to be privileged, it is presumed to be false and malicious, and no other evidence of falsehood is necessary than the publication itself in order to establish a *prima facie* case for the plaintiff.[26] The law in all such cases implies malice; in other words, it says you have no right to libel another, whatever may have been the motive or intention.[27] So if the publication is false the law will imply malice, though the editor believed it to be true and acted in good faith,[28] and where malice is implied exemplary damages may without proof be awarded.[29] But if the communication be privileged, express malice must be proved by the plaintiff before he can recover.

Newspapers have had a great deal to say concerning the inadequacies of this law as it now stands, and have discussed various changes which might relieve them from the annoyance of buncombe suits brought at the instigation of shyster lawyers. The agitation of the question by the press apparently resulted in convincing the legislatures of some of the States that the law was unjust, and not in harmony with the spirit of modern journalism. Michigan and Minnesota have passed statutes modifying the old law. In Michigan, by the statutes of 1887 (Laws 1887, p. 153), it was enacted that, in suits brought for the publications of libels in any newspaper, the plaintiff should only recover actual damages if it shall appear that the publication was made in good faith, and did not involve a criminal charge, and its falsity was due to mistake or misapprehension of the facts; and that in the next regular issue of said newspaper, after such mistake or misapprehension

Clark v. Binney, 2 Pick. (Mass.) 113; Thomas v. Croswell, 7 John. 264; Heywood v. Cuthbert, 4 McCord, 354; Roberts v. Brown, 10 Bingh. 519; Flint v. Pike, 4 Barn. & Cr. 473; Salisbury v. Union & Advertising Co., 45 Hun (N. Y.), 120; Godshark v. Metzzar, 17 Atl. Rep. (Pa.) 215; Stanley v. Webb, 4 Sandf. Sup. Ct. 21.

[20] Cowley v. Pulsifer, 137 Mass. 396; Cincinnati Gazette Co. v. Timberlake, 10 Ohio St. 548; Kelley v. Lafitte, 28 La. Ann. 435; Burrows v. Bell, 7 Gray (Mass.), 301; Barber v. St. Louis Dispatch Co., 3 Mo. App. 377.

[21] Odger's L. & S. 258.

[22] Coleman v. Hartlepool Harbor & Ry. Co., 2 L. T. 786; Stevens v. Sampson, 5 Ex. D. 53.

[23] Brook v. Evans, 29 L. J. Ch. 616.

[24] R. v. Evening News, 3 Times L. R. 255.

[25] McCabe v. Cauldwell, 18 Abb. (N. Y.) Pr. 377.

[26] Dixon v. Allen, 69 Cal. 208; King v. Root, 4 Wend. (N. Y.) 133, 21 Am. Dec. 103; Negley v. Farrow, 60 Md. 177; Smith v. Bradwell, 11 Met. (Mass.) 369; Thompson v. Powning, 15 Nev. 208.

[27] Negley v. Farrow, 60 Md. 177.

[28] Littlejohn v. Greely, 13 Abb. (N. Y.) Pr. 41.

[29] Illinois, etc. R. Coal Co. v. Ogle, 93 Ill. 353.

was brought to the knowledge of the publisher or publishers, whether before or after the suit was brought, a correction was published in as conspicuous a manner and place in said paper as was the article sued on as libelous. By section 3, it was enacted: "The words 'actual damages' in this act, shall be construed to include all damages the plaintiff may show he has suffered in respect to his property, business, trade, profession or occupation, and no other damages." Statutes substantially the same were enacted in Minnesota.

This is a step toward reform, but it does not cure all defects. In the first place, the statute purports to confine recovery, in certain cases, against newspapers, to what it calls "actual damages," and then defines actual damages to cover all direct pecuniary loss in certain specified ways, and none other, namely, in respect to property, business, trade, profession or occupation. Proof of actual damages would not only be impracticable and very difficult in these defined cases, but it does not reach all. Men may still be injured and their prospects blighted who have no property, business, trade or profession. Nine times out of ten such losses cannot be the true damages in the worse cases of libel. As Campbell, J., in Park v. Detroit Free Press,[30] says: "A woman who is slandered in her chastity is, under this law, usually without any redress whatever. A man whose income is from fixed investment or salary, or official emolument or business not impending upon his repute, could lose no money directly unless removed from the title to receive his income by reason of the libel, which could seldom happen. If contradicted soon there could be particularly no risk of this, and the same is true concerning most business losses. The cases must be very rare in which a libel will destroy business profits in such a way that the loss can be directly traced to the mischief. There could never be any such loss when employers or customers know or believe the charges unfounded. The statute does not reach cases where a libel has operated to cut off chances of office or employment in the future, or broken up or prevented relationships not capable of an exact money standard, or produced that intangible but fatal influence which suspicion, helped by ill-will, spreads beyond recall or reach by apology or retraction. Exploded lies are continually reproduced without the antidote, and no one can measure, with any accurate standard, the precise amount of evil done or probable. There is no room for holding in a constitutional system that private reputation is any more subject to be removed by statute from full legal protection than life, liberty or property. It is one of those rights necessary to human society that underlie the whole social scheme of civilization. It is a thing which is more easily injured than restored, and where injury is capable of infinite mischief; and, on the other hand, it is one where the injury is frequently, and perhaps generally, aggravated by malice. The law has, therefore, always drawn distinctions between intentionally false and wicked assaults on character, and those which were not actually designed to create a false impression, although necessarily tending to injure reputation if false in fact, but it has made both actionable. This statute has not, apparently, attempted to relieve any persons, but the publishers of newspapers, from responsibility for every injury to character by libel, whether intentionally false or not. If a person, not a publisher, had written in a letter just what this paper published, and had done so under the same impression which Mr. Robison had, the statute would not save him from full responsibility for the damages of all kinds, to which the general rules of law have always subjected persons guilty of libel. While the statute is certainly ambiguous, we cannot attribute to the legislature the monstrous wrong of shielding the intended malice of writers, who impose on fair-minded publishers, from responsibility for newspaper libels, because the publishers themselves may be innocent of deceit, or of making the publishers responsible for the full degree of actual malice in the writer who misinforms them."

One of the leading journals of the country proposed, as a change in the law, that a "libel suit against a newspaper be a criminal suit brought against that person in the paper whose wickedness or carelessness wrought the injury, be he correspondent, news editor, reporter, editorial writer, or whoever may have been the effective 'utterer' of the offense, and the punishment be not a fine, but im-

[30] 29 Alb. L. J. 315.

prisonment." Such a law would be unfair. The proprietor of the paper printing the libel is the only person connected with the journal who, in ninety-nine cases out of a hundred, is known to the person libeled. To compel the libeled person to grope through the mazes of the editorial and reportorial staff in search of the proper party against whom to bring the suit would be a hopeless task. It would virtually deny him justice, for there would, as a matter of course, in view of staring prison doors, be a general inclination to shift responsibility, with the result, doubtless, in many cases, of showing that the really responsible person was not connected with the journal at all, but one who had in good faith told a reporter what he or she at the time had believed to be perfectly true. Such a law would allow the proprietor to suppress the names of the writers and reporters, and advertise his own as proprietor and editor, and he would get all the credit for the bright ideas and good reportorial work in his paper. But when anything went wrong, or the paper was sued for libel, the name of the unfortunate reporter or writer of the article that caused the trouble would be immediately made public and surrendered to the police. The proprietor of the paper stands ready at all times to take credit for his journal's success. The editor who maps out and conducts a political campaign for him is a secondary consideration when victory is achieved, and the reporter who makes his paper the talk of the town by reason of his clever work in unraveling a mystery or tracing a criminal is in the general order of things never heard of outside of his own ranks. So when in the energetic rush and zealous effort to beat his competitors some ambitious scribbler happens to blunder into the penning of a libel, the proprietor, who would gracefully have accepted all the tribute had no error been committed, should not be permitted to gracefully step aside and allow all the ignominy, shame and expense of a criminal prosecution to fall upon the man who had probably been working night and day for a small salary to build up the proprietor's property and the reputation of his journal. If it were possible always to discriminate between malicious libels and libels that creep in inadvertently—that are the result not so much of blamable carelessness as of temporary and pardonable lapse of care caused possibly by overwork—then it might be well to hold responsible and imprison the writer of the malicious articles, and in the other case look for reparation to the proprietors, but as the law does not and cannot be made to discriminate in this way, it would be grossly more unjust to punish the writer for a momentary lapse of care than to force the proprietor, who must have profited, to a certain extent, by the publication, to pay in dollars and cents for the damage that he had done to the libeled person. To make the writers alone liable would work the slightest good on the score of care either to the press or the public. Because, first, the newspaper reporter's pride in his work and loyalty to his paper make strongly for accuracy; second, the organization and discipline of the office serve as checks to inaccuracy; and third, the feeling of certainty which every writer has, that any evidence of carelessness in the handling of important matters will bring about his dismissal from his paper, is quite as good as fear of a libel suit in making him cautious.

Under no circumstances should the proprietor of a newspaper be relieved of the responsibility of the utterances of his property—the newspaper. His vocation is to print the news of the day so that it can be known to the public. We must suppose him an educated man, one of clear, sound judgment and experience, whose rule is the old golden one, "Do unto others as you would be done by," and when items of news come into his establishment there is no excuse for his printing and issuing them without having a knowledge of what they are. If the news item relates to a party's character he must be particularly careful of how it reads, and make it read as if there certainly was a doubt in his mind, as far as the statement affecting the party's character is concerned. We are well aware that the proprietor of a paper can't be in the publication office to read over all the advertisements and news items before the paper goes to the public, but as we understand the machinery of a newspaper, there is always some person whose duty it is to read everything carefully that it is decided to print. He acts for the proprietor, and if he is incompetent, that's his employer's lookout, and he is not to be blamed, and should not be sued for libel unless the proprietor cannot

be got at, for he is the agent of the proprietor, who is responsible in law for the acts of his agents. To have the proprietors eliminated from the responsible party would be bad policy and cause no end of trouble, and leave the way open for the unrestricted publication of scandal. The public would be entirely without security or relief.

If newspapers, instead of pandering to the passions and prejudices of others, would strive more to correct abuses and expose wrongdoing, if they would encourage rather than discourage convictions, and if they would hold their subordinates to a stricter accountability, speculative suits would grow infrequent and the public would have less cause to complain of wanton publications relating to private persons and private affairs, and outrageous assaults upon public men who have at least some rights which newspapers should respect. D. M. MICKEY.

Chicago, Ill.

PRINCIPAL AND SURETY—DISTINCTION BETWEEN SURETYSHIP AND GUARANTY—NOTICE OF DEFAULT—BONDS — CONDITIONAL SIGNATURE.

PAGE V. WHITE SEWING MACH. CO.

Court of Civil Appeals of Texas, December 21, 1895.

1. A bond whereby the obligors bind themselves severally and individually for the performance by the principal of certain acts, consisting of the payment to the obligee, a sewing machine company, of all claims owing the obligee from the principal, is, as affects the sureties, a contract of suretyship, and not of guaranty, and therefore the failure of the obligee to notify the obligors of the default of the principal does not affect their liability.

2. When a bond provides that each obligor signing the bond shall be absolutely bound, without regard to any other instrument of agreement whatever, an obligor cannot defend by showing that his liability was subject to oral conditions.

3. A bond conditioned on the payment of all indebtedness from the principal obligor, whether evidenced by book accounts, notes, or otherwise, provided that the obligors waived "presentment for payment, notice of non-payment, protest, and notice of protest, and diligence, on all notes." Held, that notice of default in payment of notes given for the purchase of goods sold the principal by the obligee was waived by the sureties.

LIGHTFOOT, C. J.: The appellee sued appellants, August 22, 1889, upon the following bond, which was duly signed and executed by W. S. Page, G. G. Towles, W. P. Epperson, and W. H. Niles: "Know all men by these presents, that we, W. S. Page and G. G. Towles and W. P. Epperson and W. H. Niles are held and firmly bound, severally and individually, unto the White Sewing Machine Company, in the sum of one thousand dollars, lawful money of the U. S. of America, to be paid to the White Sewing Machine Company, their representatives or assigns, for which payment (together with ten per cent. thereon in case of suit upon this bond), well and truly to be made, they bind themselves, their heirs, executors, administrators, and separate estate, jointly and severally, firmly by these presents. Sealed with their seals. Dated the March 12th, one thousand eight hundred eighty-six. The conditions of the above obligation are such that if the above-bounden W. S. Page, his heirs, executors, or administrators, shall well and truly pay, or cause to be paid, any and every indebtedness or liability now existing, or which may hereafter, in any manner, exist or be incurred, on the part of the said W. S. Page, to the White Sewing Machine Co. or its assigns, whether such indebtedness or liability shall exist in the shape of book accounts, notes, or leases, renewals or extensions of notes, accounts, leases, acceptances indorsements, consignments of property or merchandise, failure to deliver or account for same, or any part thereof, or otherwise, and whether same shall be waived under any contract between said White Sewing Machine Company and said W. S. Page or otherwise, and whether same shall arise out of the purchase and sale of sewing machines, or otherwise, hereby waiving presentment for payment, notice of non-payment, protest, and notice of protest, and diligence, upon all notes, accounts or leases now or hereafter executed, indorsed, transferred, guarantied, or assigned by the said W. S. Page to the White Sewing Machine Company, its agents or assigns, then this obligation shall be null and void, but otherwise to be and remain in full force and effect. Each one signing this bond is bound according to the purport of it, without regard to any understanding that any person should also sign this instrument, and the person to whom this is intrusted has absolute authority to deliver it, and the same is made and shall be construed without reference to any other instrument or agreement whatsoever. It is further understood, and the undersigned hereby agree and consent, that the White Sewing Machine Company or its agents may, in their discretion, take and receive from said W. S. Page any security whatsoever, mortgage, personal or other property, at any time or times, and grant any extension to said W. S. Page, without in any way affecting the liability of the signers hereto, or either of them, from the obligations of this bond." The above bond was made an exhibit to the petition. W. P. Epperson and W. H. Niles, being non-residents and insolvent, were not sued. The petition alleged a breach of the bond, in that W. S. Page, the principal in the bond, became indebted to plaintiff by the purchase of sewing machines under his contract, and that judgment had been ob-

tained against him for $4,449.24 therefor, which he had failed and refused to pay. Plaintiff set out various claims, and prayed for judgment on the bond, and for 10 per cent. attorney's fees, and for general relief. December 2, 1893, the appellants, W. S. Page and G. G. Towles, filed their second amended answer, consisting of a general denial, a plea of *res adjudicata* by W. S. Page, a plea in the nature of *non est factum* by G. G. Towles; that said contract was signed by him upon a condition which was never fulfilled; that no notice of the acceptance of same was ever given him by plaintiffs, etc.; that defendant G. G. Towles is released by reason of plaintiff's having failed to notify him of the default of defendant Page; and that the contract was changed, and additional credit given said Page, in 1888, whereby the defendant G. G. Towles was released, etc. December 2, 1893, plaintiff filed its first supplemental petition in reply to defendant's said answer, alleging that, by reason of the terms of the contract sued upon, defendant Towles was estopped from setting up said defenses contained in his second amended answer. On December 3, 1893, the case was tried by a jury; and in accordance with the instructions of the court the jury returned a verdict in favor of plaintiff and against defendants for $1,000, with interest at the rate of 6 per cent. per annum from August 22, 1889, until the trial, and 10 per cent. as attorney's fees, upon which judgment was rendered, and defendants appeal.

The above bond of appellant W. S. Page was introduced in evidence, and it was fully shown that he was indebted to appellee as alleged in its petition. Appellants have ably presented the case, from their standpoint; but appellee has filed no brief, or appeared in this court, and we have had no aid whatever from that side in the investigation of the important questions considered.

Under appellants' fifth, sixth, and seventh assignments of error, they complain of the ruling of the court in excluding the testimony of appellant G. G. Towles, by which he attempted to show that appellee had no cause of action against him, because, when he signed the bond, he did so on condition that the contract of W. S. Page should be extended to other counties, and additional credit given him, and that he (Towles) should be notified of the fact, and that the bond never became a binding obligation upon him. The bond, which was signed by the witness Towles as a surety, provides on its face that "each one signing this bond is bound according to the purport of it, without regard to any understanding that any person should also sign this instrument, and the person to whom this is intrusted his absolute authority to deliver it, and the same is made and shall be construed without reference to any other instrument or agreement whatsoever." The instrument was delivered, the territory of W. S. Page was extended, and his line of credit enlarged. Under such facts, did the court err in excluding the oral testimony of G. G. Towles, by which he sought to evade the terms of the written contract by parol understanding? We think not.

It is further contended by appellants that the court erred in excluding the testimony offered by appellant Towles tending to show that, if he had known of the default of his principal, he could have saved himself harmless by getting additional security, but the company gave him no notice. Appellants insist upon treating the contract as one of strict legal guaranty. We cannot so regard it. It is a plain bond, executed by W. S. Page to the appellee, with G. G. Towles and others as securities. The contract is between the appellee, on the one side, and W. S. Page as principal, and Towles and others as sureties, on the other. The difference between a contract of guaranty and one of suretyship is not always clearly marked or well defined. In And. Law Dict. p. 497, the difference is thus stated: "A contract of suretyship is a direct liability to the creditor for the act to be performed by the debtor, whereas a guaranty is a liability only for his ability to perform this act. A surety assumes to perform the contract for the principal debtor, if he should not. A 'guarantor' undertakes that his principal can perform; that he is able to perform. The undertaking of a surety is immediate and direct—that the act shall be done, and, if not done, then he is to be responsible at once; but, from the nature of the undertaking of a guarantor non-ability (insolvency) must be shown." "A guarantor insures the solvency of the debtor. A surety insures the debt itself. A surety must demand proceedings, with notice that he will not continue bound unless they are instituted, whereas a guarantor may rely upon the obligation of the creditor to use due diligence to secure satisfaction of his claim." Reigart v. White, 52 Pa. St. 438; Kramph v. Hatz, *Id.* 525. Mr. Brandt, in his work on Suretyship and Guaranty (section 1), thus states the difference: "What is a Surety or Guarantor—Difference between Them. A surety or guarantor is one who becomes responsible for the debt, default, or miscarriage of another person. The words 'surety' and 'guarantor' are often used indiscriminately, as synonymous terms; but, while a surety and a guarantor have this in common,—that they are both bound for another person,—yet there are points of difference between them which should be carefully noted. A surety is usually bound with his principal, by the same instrument, executed at the same time and on the same consideration. He is an original promisor and debtor, from the beginning, and is held ordinarily to know every default of his principal. Usually, he will not be protected, either by the mere indulgence of the creditor to the principal, or by want of notice of the default of the principal, no matter how much he may be injured thereby. On the other hand, the contract of the guarantor is his own separate undertaking, in which the

principal does not join. * * * The principal and surety, being directly and equally bound, may be sued jointly in the same suit, while the guarantor, being bound by a separate contract, and only collaterally liable, cannot usually be joined in the same suit with the principal." See, also, *Id.* § 100. This definition was adopted, in substance, by the court of appeals, from Burge on Sureties, as follows: "Surety—Guarantor—Difference between. A surety is usually bound with his principal in one and the same instrument, executed at the same time and on the same consideration. On the other hand, the contract of the guarantor is his own separate undertaking, in which the principal does not join. Burge, Sur. § 1. A surety is, in the first instance, answerable for the debt for which he makes himself responsible, while the guarantor is only liable when default is made by the party whose undertaking is guarantied. A guarantor is entitled to notice. *Id.* § 157. A surety is liable upon the delivery of the obligation." Garrett v. Insurance Co., 1 White & W. Civ. Cas. Ct. App. § 937. This distinction has been recognized and acted upon by our supreme court wherever the question has arisen, though we find no direct adjudication upon it. This is a plain bond, executed by a principal, with sureties, whereby the obligors bind themselves for the performance of certain things by the principal in the bond. It is not a technical contract of guaranty, under which the sureties may claim a release because they are not notified of the default of the principal. Manufacturing Co. v. Ponder, 82 Tex. 653, 18 S. W. Rep. 152; Association v. Smith, 70 Tex. 168, 7 S. W. Rep. 793; Bennett v. Association, 57 Tex. 72; Lemp v. Armengol, 86 Tex. 690, 26 S. W. Rep. 941; Hueske v. Broussard, 55 Tex. 201; Clark v. Cummings, 84 Tex. 610, 19 S. W. Rep. 798; Palmer v. Bagg, 56 N. Y. 523. Under a technical contract of guaranty, where the guarantor alone makes a contract with the guarantee, that he will stand bound for the acts of a third person, the contract is between the guarantor and the guarantee, and the rules as to notice will usually apply. Wilkins v. Carter, 84 Tex. 438, 19 S. W. Rep. 997; Johnson v. Bailey, 79 Tex. 516, 15 S. W. Rep. 499; Davis v. Wells, 104 U. S. 159; *Id.*, 115 U. S. 524, 6 Sup. Ct. Rep. 173. But we have here no such contract of guaranty, and the rules invoked by appellant do not apply.

Appellants, in their able presentation of the case, rely upon the cases of Davis v. Mills, 55 Iowa, 543, 8 N. W. Rep. 356, and Manufacturing Co. v. Littler, 56 Iowa, 601, 9 N. W. Rep. 905. In the former there was a clear contract of guaranty. In the latter the terms of the contract are vaguely set out, but, from the portions given, it seems to be a very different contract from the one before us. The court there lays much stress on a provision in the contract that the party indemnified had the power, at pleasure, to annul and put an end to the contract, and the company did terminate it, taking the note of the agent on settlement. In this case no such provision occurs in the contract, but, on the contrary, the contract provides as follows: "It is further understood, and the undersigned hereby agree and consent, that the White Sewing-Machine Company or its agents may, in their discretion, take and receive from said W. S. Page any security whatsoever, mortgage, personal or other property, at any time or times, and grant any extension to said W. S. Page, without in any way affecting the liability of the signers hereto, or either of them, from the obligations of this bond." Thus, the parties bound themselves, in the most solemn manner, that the sureties should not be released by reason of any extension of time, or the taking of any security or property whatsoever from W. S. Page. Under our statutes, appellant, whose duty it was, under the contract, to keep himself posted in regard to his principal, could have relieved himself by serving notice on the party indemnified at any time after a cause of action accrued. Sayles' Civ. St. art. 3660. "Any person bound as surety upon any contract for the payment of money or the performance of any act, when the right of action has accrued, may require by notice in writing, the creditor or obligee forthwith, to institute suit upon such contract." No such notice was given by appellant Towles, but he here claims that notice should have been given to him by the obligee in the bond. We fully realize the difficulty in determining the exact difference between contracts of strict guaranty and suretyship, and of harmonizing the conflicting decisions upon the subject. It has been held, with much forcible reasoning, in some of the States, that in every case where the bond signed by the surety is collateral to the main contract, even though such bond is also signed by the principal in the main contract, it is nevertheless a contract of guaranty; that the surety is only bound collaterally, and is entitled to notice of the default of the principal, so that he may protect himself. La Rose v. Bank, 102 Ind. 332, 1 N. E. Rep. 805, and authorities there cited; Kearnes v. Montgomery, 4 W. Va. 29; Manufacturing Co. v. Forsyth, 108 Ind. 334, 9 N. E. Rep. 372. On the other hand, in a case similar to the one before us, involving a bond giving to a sewing machine company, not so strong in its terms as this, it was held by the Supreme Court of Alabama, supported by quite an array of authorities, that while a case might arise involving only the secondary liability of the sponsors, though the undertaking be signed also by the principal, "in most cases the joint execution of a contract by the principal and another operates to exclude the idea of a guaranty, and that in all cases such fact is an index pointing to suretyship." Saint v. Manufacturing Co., 95 Ala. 362, 10 South. Rep. 539, and authorities there cited; Campbell v. Sherman, 151 Pa. St. 70, 25 Atl. Rep. 35; Reigart v. White, 52 Pa. St. 440. After all, the contract in each case must be construed, and its true intent and purpose drawn from the terms in which the parties themselves

have expressed it. In the case of Davis v. Wells, 104 U. S. 169, the Supreme Court of the United States held that even though the contract was one of continuing guaranty, and so shown upon its face, yet the guarantor, by agreeing to guaranty, "unconditionally and at all times," the indebtedness, waived notice of the default. It has been held in Illinois that in case of an absolute guaranty the guarantor is not entitled to notice of non-performance. Taussig v. Reid, 145 Ill. 488, 32 N. E. Rep. 918, citing 2 Story, Cont. § 1133; Baylies, Sur. 202. See, also, McMillan v. Bank, 32 Ind. 11; Beebe v. Dudley, 26 N. H. 249. Whether the contract in this case should be construed as a continuing guaranty or suretyship, in either event the only object of notice of default on the part of the principal would be that the surety might protect himself against loss. The contract itself provides the conditions of the bond, as follows: "The conditions of the above obligation are such that if the above-bound W. S. Page, his heirs, executors, or administrators, shall well and truly pay, or cause to be paid, any and every indebtedness or liability now existing, or which may hereafter in any manner exist or be incurred, on the part of said W. S. Page to the White Sewing Machine Company or its assigns, whether such indebtedness or liability shall exist in the shape of book accounts, notes, or leases, renewals or extensions of notes, accounts, leases, acceptances, indorsements, consignments of property or merchandise, failure to deliver or account for same or any part thereof, or otherwise, and whether the same shall be waived under any contract between said White Sewing Machine Company and said W. S. Page or otherwise, and whether the same shall arise out of the purchase and sale of sewing machines or otherwise, hereby waiving presentment for payment, notice of non-payment, protest and notice of protest, and diligence, upon all notes, accounts, or leases now or hereafter executed, indorsed, transferred, guarantied, or assigned by the said W. S. Page to the White Sewing Machine Company, its agents or assigns," etc. The liability upon which this suit was brought originated in the sale of certain sewing machines by the company to Page, for which he had executed his promissory notes. Were the appellants entitled to notice of non-payment of these notes? The contract itself expressly waives notice of nonpayment of the notes, as well as diligence on the part of the company in collecting them, which waiver applies to all notes executed by Page, as well as those indorsed, transferred, guarantied, or assigned by him. The court did not err in excluding the testimony of Towles, as complained of under these assignments. The other assignments are not considered as material. The judgment of the court below fully protects appellant Page by providing that any sum which may be realized from this judgment shall also be credited on the other judgment in favor of appellee against him, and that any sum realized on that judgment shall be credited on this. We find no error in the judgment, and it is affirmed.

NOTE.—As stated in the principal case the courts have found it difficult to decide in many cases whether a party is a surety or a guarantor; yet the rights and duties of parties (Hall v. Weaver, 34 Fed. Rep. 104), occupying the two situations, differ in many particulars. A surety is not discharged because the creditor gives time to the debtor (Benson v. Phipps, 87 Tex. 578; Smith v. Mason, 44 Neb. 610), unless he has made a contract upon sufficient consideration so to do; whether a contract to pay the interest accruing during such delay is based upon a sufficient consideration is a disputed question. Wayman v. Jones, 58 Mo. App. 313; Benson v. Phipps, 87 Tex. 578. A guarantee, however, runs the risk if he delays his efforts to collect from the debtor that the guarantor may be discharged. Campbell v. Sherman, 151 Pa. St. 70. Neither a guarantor nor a surety is discharged by the receipt by the creditor of additional security (Presb. Board v. Gilliford, 139 Ind. 524; Mack v. Anderson, 33 N. Y. Sup. 208), but a refusal by the creditor to receive his debt when tendered to him works the discharge of a surety. Spurgeon v. Smita, 114 Ind. 453. Whatever rights a party may have as guarantor or surety may be waived or altered by contract, and the courts will follow the provisions of the contracts the parties may choose to make. Davis, etc. Co. v. Rosenbaum (Miss., Nov., 1894), 16 South. Rep. 340. Sureties have claimed release because other parties, who by agreement were also to sign, have not done so; in such cases the courts generally refuse such release, if the obligee was not aware of such agreement. Winters v. Robison, 14 Pa. Co. Ct. 264; Owen v. Owen, 39 Neb. 14. It is different, however, when the contract or bond on its face shows that others were to sign it (Martin v. Hornsby, 55 Minn. 187), unless all the signers were present when the bond was delivered to the obligee, for a waiver would be then inferred. Van Norman v. Barbeau, 54 Minn. 388.

Contract of Guaranty.—A contract of guaranty requires a sufficient consideration to make it binding. The consideration need not pass directly from the party giving it to the party receiving it. It is enough if a benefit arises to the party for whom the guaranty is given, or the party receiving the guaranty is or may be injured by it. Winans v. Gibbs, etc. Co., 48 Kan. 777. When the guaranty is made and on the faith of it the guarantee carries out his contract, there is sufficient consideration to support the guaranty. Heyman v. Dooley, 77 Md. 162. When the guaranty is subsequent to the original undertaking and was not an inducement to it, though the subsisting liability is the ground of the promise without any direct and connected inducement, there must be some additional consideration to sustain it. Peck v. Harris, 57 Mo. App. 467. A guarantee of a note after its delivery requires some new consideration. Grier v. Cable, 45 Ill. App. 405.

Notice of Acceptance of Guaranty.—It is held, that the guarantor must receive from the guarantee within a reasonable time, in order to bind him thereby, a notice that his guaranty has been accepted, except in cases of absolute guaranty, when no notice is required. Klosterman v. Olcott, 25 Neb. 382. The courts do not agree as to the definition of an absolute guaranty. Where the guaranty was, that, if A purchased a case of tobacco on credit B agreed to see the same paid within four months, it was held that the guaranty was absolute

because no condition was attached except the sale. Case v. Howard, 41 Iowa, 479. The same was the ruling where A authorized B to sell certain goods to C, and in case C did not pay he would after notice for a certain time (Platter v. Green, 26 Kan. 252); so where A agreed to pay B whatever C should owe him up to a specified time. Maynard v. Morse, 36 Vt. 617. When it is an offer to be bound in consideration of an act to be done, the doing of the act constitutes the acceptance of the offer, and unless the act is of such a kind that knowledge of it will not come quickly to the promissor, it is not necessary to give the latter any notice of the acceptance of his promise. Bishop v. Eaton, 161 Mass. 496; Hyman v. Dooley, 77 Md. 162. When the guaranty is signed at the request of the guarantor, it is generally held that no notice of its acceptance is necessary. Lehigh, etc., Co. v. Scallen (Minn., May, 1895), 63 N. W. Rep. 245; Davis v. Wells, 104 U. S. 159. *Contra:* Evans v. McCormick, 167 Pa. St. 247. Nor is notice necessary, when the guaranty mentions a consideration therefor. Taylor v. Tolman Co., 47 Ill. App. 264. The delivery of the guaranty by the guarantor to the agent of the guarantee dispenses with notice, of its acceptance. Lemp v. Armengol, 86 Tex. 690. In all cases where the writing or instrument is in legal effect merely an offer or proposal, which requires acceptance to make a bargain, a notice of its acceptance must be given within a reasonable time in order to render the guarantor liable. Davis v. Wells, 104 U. S. 159; Taylor v. Tolman Co., 47 Ill. App. 264; Farmers' Bk. v. Tatnall, 7 Hous. 287; Carter v. Williams (Tex. Civ. App. Jan., 1895), 29 S. W. Rep. 1102. Unless stipulated otherwise the knowledge of the acceptance of the offer may come from any source. Webster v. Smith, 4 Ind. App. 44. It is sufficient notice, that the guarantor is doing work, relying on the guaranty. Bascom v. Smith, 164 Mass. 61. It is sufficient if such notice is communicated in such manner as under the circumstances was to be expected. Where the guarantor lived in a different county from that of the guarantee, a notice of acceptance sent through the mail was considered to be sufficient though the guarantor asserted it was never received. Bishop v. Eaton, 161 Mass. 496. Though a guaranty is unlimited as to time and amount, yet it will not be held binding in such matters beyond what is reasonable under the circumstances of the case. Lehigh, etc. Co. v. Scallen, *supra*.

Notice of Default of Debtor.—The courts disagree as to whether it is incumbent on the guarantee to notify the guarantor of the default of the debtor. Hyman v. Dooley, 77 Md. 162. Where such duty is imposed on the guarantee, the guarantor is relieved from responsibility to the extent,that he has suffered from such lack of information by reason of any change in the circumstances of the debtor. Taussig v. Reid, 145 Ill. 488; Bishop v. Eaton, 161 Mass. 496. The same rule has been applied, when the guarantee has not used due diligence in collecting the debt from the debtor. Durand v. Bowen, 73 Iowa, 573; Burrow v. Zapp, 69 Tex. 474. Of course no such rule can be applied in case the debtor was unable to pay, when the guaranty was given, and his financial condition has not changed since that time. Hooper v. Hooper, 81 Md. 155.

S. S. MERRILL.

JETSAM AND FLOTSAM.

NOTARY'S PROTEST OF HIS OWN NOTE.

The question whether a bank cashier, who himself was the maker of a promissory note, could act as notary public to protest the note so as to charge the indorser, arose in Dykman v. Northbridge, N. Y. Supreme Court, Appellate Division. When suit was brought on this note one of the defenses was that the note was improperly protested, because the maker thereof could not act as notary. The court, disposing of the point, said that no reason could be seen why the cashier, acting as agent of the bank, could not notify the indorser of his non-payment, or why, as notary, he could not make a proper protest for non-payment. The act itself was not inconsistent with his official duty as notary. The note had come to the notary's hands for presentation for payment. He then protested it in the usual way by mailing to the indorser's address a notice of protest in the usual form. This complied in all essential respects with the law, and constituted a sufficient notice to charge the indorser. The court cited Bank v. Warden, 1 N. Y. 413; Bank v. Barkus, 36 N. Y. 111. In the absence of any suggestion of fraud or irregularity or a prohibiting statute, no reason exists why a notary may not protest his own note as long as he complies with the law. Perhaps in practice it were better not to do so, and the cases are rare.—*National Corporation Reporter.*

CORRESPONDENCE.

A QUESTION OF DEVISE.

To the Editor of the Central Law Journal:

In every issue of the JOURNAL I notice more or less questions propounded and answered in some subsequent issue. I have one upon which I would like to be enlightened by yourself or some of the readers of, or contributors to, the JOURNAL. It is as follows: W T died leaving a will containing the following item: "Item 6. I give, devise and bequeath to my grandchildren, A T and W T, the north 1-2 of the northeast 1-4 of section 9, township 59, range 29, 80 acres, and to their bodily heirs forever; said land is not to be sold or incumbered during the minority of said grandchildren, said land lying and being in the county of Daviess and State of Missouri." The grandchild, A T, is a woman eighteen years old and married, while the grandchild, W T, is a girl not yet eighteen years old. Now, assuming that there are no other provisions in the will of W T affecting or limiting in any manner the meaning of item 6, what estate is devised to the grandchildren in the eighty acres of land? The devisor dying in July, 1895, and this eighty acres having been leased by him together with other land in one body for that year, who would be entitled to the rent earned by the eighty for that year, the grandchildren or the executor?

J. A. S.

BOOKS RECEIVED.

Extraordinary Cases. By Henry Lauren Clinton. New York: Harper & Brothers, Publishers. 1896.

Hand Book on the Law of Bailments and Carriers. By William B. Hale, LL.B., St. Paul, Minn.: West Publishing Co. 1896.

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HUMORS OF THE LAW.

It was one of the delights of the late Lord Coleridge to profess ignorance of things supposed to be of common knowledge. In a newspaper libel action his lordship, in his most silvery tones, asked, "What is 'Truth'?" "It is a newspaper, my Lud," replied counsel. "Oh!" said his lordship, preserving his simplicity and splendid gravity; "isn't that an entirely new definition?"

WEEKLY DIGEST

Of ALL the Current Opinions of ALL the State and Territorial Courts of Last Resort, and of the Supreme, Circuit and District Courts of the United States, except those that are Published in Full or Commented upon in our Notes of Recent Decisions.

1. ADVERSE POSSESSION. — The occupancy of two cabins situated on a tract of timber land owned by a non-resident, by various persons at different times—it not appearing by whose authority, or that they paid any rent—cannot be considered the possession of the holder of a tax deed which was not recorded, and cannot be tacked to the possession of a subsequent grantee of the tax purchaser.—WILSON v. PURL, Mo., 34 S. W. Rep. 884.

2. ASSUMPSIT — Implied Promise. — Where plaintiff orally agreed to convey certain premises to defendant, and to build a house thereon, defendant on his part agreeing to furnish material, and, by mortgage of the premises, to furnish the necessary money, and upon completion of the house to reconvey to plaintiff, taking second mortgage to secure himself against loss, the defendant, on his refusal to reconvey as agreed at the completion of the work, having received the benefit of the money expended by plaintiff, will be held liable under an implied promise to repay the amount so expended.—HOLBROOK v. CLAPP, Mass., 43 N. E. Rep. 508.

3. ALTERATION OF INSTRUMENT — Notes — Negotiability.—It is not an alteration of the contract of the maker of a note that the payee, on transferring it to a third person, in addition to indorsing it, writes thereon a guaranty of payment thereof.—HUTCHES v. J. I. CASE THRESHING MACH. CO., Tex., 35 S. W. Rep. 60.

4. ATTACHMENT—Property Subject to.—In an action to recover goods taken under alleged wrongful attachment, where it appeared that plaintiff, having purchased debtor's goods under attachment, put him in possession as agent, and, while so in possession, he intermingled with them other goods not so purchased and defendant attached the whole stock, alleging that the larger portion of it belonged in fact to the debtor, it was error to charge the jury that, if the goods so intermingled with those of plaintiff were of less value, the defendant had no right to take them under attachment.—BROOKS v. LOWENSTEIN, Tenn., 35 S. W. Rep. 89.

5. BUILDING ASSOCIATION—Sale of Stock—Authority of Agent.—Where a building association's agent, engaged in establishing local boards, soliciting stock, negotiating loans, and at times, with the consent of the association, collecting the price of prepaid stock, accepted payment for prepaid stock partly in cash and partly in stock of another association, and failed to turn over such cash and stock to the association, and no prepaid stock was issued to the purchaser, the association was liable to him to the extent of the cash payment, since the collection of the price of the stock was to that extent within the apparent scope of the agent's authority.—GERMAN-AMERICAN BUILDING ASS'N v. DROGE, Ind., 43 N. E. Rep. 475.

6. CARRIERS OF GOODS—Delivery to Carrier—Custom. —Where it is shown that by local custom placing goods on a depot platform for shipment by a carrier was a delivery to the carrier, a railroad company is liable to the owners for the value of cotton placed on its platform for shipment with the knowledge of its agent, and destroyed while there by fire set by a boy who was playing on the platform, and could have been seen by the agent from the depot office.—FT. WORTH & D. C. RY. CO. v. MARTIN, Tex., 35 S. W. Rep. 21.

7. CARRIERS OF PASSENGERS—Conditions on Ticket. —A provision on a railroad ticket that it shall be good for one day only, unless the holder shall deposit the return half thereof with the company's agent before expiration, and have it extended, is reasonable.—MISSOURI, K. & T. RY. CO. OF TEXAS v. MURPHY, Tex., 35 S. W. Rep. 66.

8. CARRIERS—Passengers—Complaint. — A complaint against a common carrier for injuries to a passenger from being thrown from a vehicle, which did not expressly aver that the passenger was free from contributory negligence, but alleged that, by reason of the negligence of defendant's servant in the management of the horses and vehicle, the passenger was violently thrown therefrom, was insufficient.—WAHL v. SHOULDER, Ind., 43 N. E. Rep. 458.

9. CHATTEL MORTGAGES—Conversion by Mortgagee. —Where the mortgagee ,authorized to take possession of the mortgaged chattels on default in payment, and sell the same for the payment of the debt, takes possession, and instead of foreclosing the mortgage, keeps the property, treating it as his own, he is liable as for a conversion thereof.—HOWERY v. HOOVER, Iowa, 66 N. W. Rep. 772.

10. CHATTEL MORTGAGES — Rights of Mortgagee. — Where the mortgagee authorizes the mortgagor, before the mortgage debt is due, to sell the mortgaged chattels, the proceeds to be applied upon the mortgage debt, the mortgagee has no lien on the unpaid price due the mortgagor, as against creditors of the mortgagor attaching the purchase money by garnishment proceeding; Civ. Code, § 2888, providing that the title to mortgaged chattels remains in the mortgagor.—MAIER v. FREEMAN, Cal., 44 Pac. Rep. 357.

11. CONSTITUTIONAL LAW—Legislative Act—Impeachment.—A bill properly enrolled and signed by the presiding officer of each of the two houses, and signed and approved by the governor, cannot be impeached

by reference to the journals of either house to show that its mode of enactment was not in conformity to all constitutional requirements.—LAFFERTY v. HUFFMAN, Ky., 35 S. W. Rep. 123.

12. CONSTITUTIONAL LAW—Protection of Game.—Laws 1895, ch. 221, providing for the protection of fish, and authorizing the game wardens to seize and destroy any nets found in the waters of the State in violation of the law, is not unconstitutional as depriving the owner of the nets of his property without due process of law.—BITTENBAUS v. JOHNSTON, Wis., 66 N. W. Rep. 805.

13. CONSTITUTIONAL LAW—Statute—Prohibitory Laws.—In a legislative act prohibiting the sale of liquor in a certain county, a provision conferring jurisdiction of prosecutions for its violation on justices of the peace is germane to the subject-matter of the act, and naturally embraced therein, and is not invalid because not specially referred to in the title.—MCTIGUE v. COMMONWEALTH, Ky., 35 S. W. Rep. 121.

14. CONTRACT—Construction. — A contract whereby plaintiff agrees to furnish defendant certain merchandise at a certain price, to be sold by him as agent for plaintiff, the defendant to purchase the merchandise remaining unsold at a certain time, title to remain in plaintiff until the price is paid, is a contract of agency, and not a sale of the goods to defendant, so as to render him absolutely liable for the goods if destroyed by fire without negligence on his part.—NORTON v. MELICK, Iowa, 66 N. W. Rep. 780.

15. CONTRACT FOR SUPPORT OF LUNATIC.—Where the contract by defendant to pay for the support of a dipsomaniac while confined in a State asylum provides for his removal whenever the room occupied by him shall be required for a class of patients preferred by law, that the dipsomaniac was discharged without notice to any one, and before he had derived any benefit from his confinement, is no defense to an action to recover for his support.—WOOD v. DEAN, Mass., 43 N. E. Rep. 510.

16. CONTRACT OF SALE — Construction. — Defendant contracted, in writing, to manufacture and deliver to plaintiffs, for shipment, oil of a certain brand, color, and fire test. Plaintiffs, pursuant to the rules of the produce exchange, which were made a part of the contract, appointed an inspector, who certified that the oil delivered was of the brand, color and test contracted for. Said rules also provided that the acceptance of the oil by the buyer's inspector should be an acknowledgment that the oil is in accordance with the contract: Held, that defendant was bound to deliver oil free from latent defects growing out of the process of manufacture, which would render it unmerchantable at the time and place of delivery, and which could be avoided by the exercise of reasonable care.—CARLETON v. LOMBARD, AYERS & CO., N. Y., 43 N. E. Rep. 422.

17. CONTRACT—Time for Performance.—Where in a contract for the manufacture of material, no time is specified for its performance, in determining what would be a reasonable time, regard must be had to the capacity of the manufacturer's plant, though the other party was unaware of its capacity; and such question is not to be determined from the time in which manufacturers in general would have performed the contract.—SMITH v. SPRATT MACH. CO., S. Car., 24 S. E. Rep. 376.

18. CORPORATIONS—Action against Stockholder.—It is not a good plea in abatement, in an action against a stockholder in a corporation, based on a statute providing that the stockholders shall be personally liable for the indebtedness of the corporation, beyond their stock, to an amount equal to the par value of their stock, to allege merely that there are many other stockholders besides the defendant, and many other creditors besides the plaintiff, without alleging any interest in any one else in the plaintiff's cause of action, or that others are jointly liable with the defendant.—GLENS FALLS NAT. BANK v. CRAMTON, U. S. C. C. (Vt.), 72 Fed. Rep. 734.

19. CORPORATIONS—Dissolution—Right of Receiver.—A receiver of the assets of a corporation, appointed, upon its dissolution, as its successor, by the statutes and the courts of the State where it was organized, can sue in a federal court sitting in another State upon rights of action belonging to such corporation.—AVERY v. BOSTON SAFE-DEPOSIT & TRUST CO., U. S. C. C. (Mass.), 72 Fed. Rep. 700.

20. COUNTY BOARD—Power to Mortgage County Land.—Express authority to county commissioners to sell real estate of the county at a fair price does not imply power to mortgage the same, thereby permitting an indirect alienation at much less than the value of the property.—VAUGHAN v. BOARD OF COM'RS OF FORSYTH COUNTY, N. Car., 24 S. E. Rep. 425.

21. CRIMINAL LAW— Burglary — Indictment. — Under Code, § 4302, providing that, in prosecutions for offenses against the person or property, erroneous allegations as to the name of the person injured shall be immaterial, a mistake in an indictment for burglary as to the name of the owner of the building is immaterial.—STATE v. PORTER, Iowa, 66 N. W. Rep. 745.

22. CRIMINAL LAW—Embezzlement—Where Punishable.—Pub. St. ch. 203, §§ 37, 39, 41, 43, relating to embezzlement, provide that one who embezzles "shall be deemed guilty of simple larceny," or "deemed guilty of larceny;" and as a person who commits larceny in another State, and brings the property into the State, can be punished for larceny in the State, one who takes up a railroad ticket in New York as an employee of the railroad, and converts it to his own use in the State instead of canceling it, and returning it to the office of the railroad company, may be convicted in the State of embezzlement.—COMMONWEALTH v. PARKER, Mass., 43 N. E. Rep. 499.

23. CRIMINAL LAW — False Pretenses — Meaning of "Property."—Under Code, § 45, subds. 9, 10, making the word "property" embrace real and personal property, and including under personal property "evidences of debt," a non-negotiable draft drawn on an insurance company by its authorized adjuster, in settlement of a claim, subject to the company's approval, is "property," within Code, § 4073, punishing any person who obtains money, goods or property by false pretenses, though such draft be never approved or accepted.—STATE v. PATTY, Iowa, 66 N. W. Rep. 727.

24. CRIMINAL LAW—Fraudulent Banking.—McClain's Code, §§ 1824, 1825, provide that if any bank shall receive or accept any deposit when insolvent, any officer or managing party thereof, knowing of such insolvency, who shall knowingly permit the receiving of any such deposit as aforesaid, shall be guilty, etc.: Held, that an officer of an insolvent bank, who, knowing of its insolvency, permits or connives at the receiving of deposits, is guilty of the offense described, whether he is a managing party or not.—STATE v. YETZER, Iowa, 66 N. W. Rep. 737.

25. CRIMINAL LAW — Homicide.—In indictment for murder, where the evidence shows that the prisoner had concealed himself behind a tree in order to shoot his victim, and the trial judge instructed that if the killing was by lying in wait and shooting deceased from behind a tree, and was willful, deliberate, and premeditated, it was murder in the first degree, the additional instruction that there was no evidence in the case of murder in the second degree was error, under Laws N. C. 1893, ch. 85, § 3, providing that the jury should determine in their verdict whether the crime was murder in the first or second degree.—STATE v. LOCKLEAR, N. Car., 24 S. E. Rep. 410.

26. CRIMINAL LAW—Homicide—Evidence.—On a murder trial, where it appeared that deceased and his friends formed one faction in a neighborhood feud, and that defendant and his friends formed the other, evidence that prior to the homicide there were frequent quarrels and fights between the factions was admissible, where it also appeared that defendant was present and took part.—STATE v. HELM, Iowa, 66 N. W. Rep. 751.

27. CRIMINAL LAW — Homicide — Premeditation.—To constitute deliberation and premeditation as an element of the crime of murder in the first degree, something more must appear than the prior existence of actual malice, arising from the use of a deadly weapon, and, though the mental process may require but a moment of thought, the State must show it, so as to satisfy the jury beyond a reasonable doubt that the prisoner weighed and balanced the subject of killing in his mind long enough to consider the reason or motive which impelled him to the act, and to form a fixed design to kill in furtherance of such purpose or motive.—STATE v. THOMAS, N. Car., 24 S. E. Rep. 431.

28. CRIMINAL LAW — Keeping Disorderly House.—Where a wife owns a bawdy house, and conducts the business, her husband, who lives with her in such house and off the proceeds of such business, is guilty of keeping a bawdy house.—HUNTER v. STATE, Ind., 43 N. E. Rep. 452.

29. CRIMINAL LAW—Jury—Competency.—A juror who heard part of the evidence and of the argument on the trial of one who was jointly indicted with defendant is not disqualified to serve as juror on the trial of defendant, where he says he has no opinion as to the guilt of accused.—STATE v. PHILPOT, Iowa, 66 N. W. Rep. 730.

30. CRIMINAL LAW — Jurors — Competency.—Though jurors testify that they have formed opinions as to defendant's guilt from reading newspaper reports of the evidence on a former trial, yet, when their entire *voir dire* examination shows that the alleged opinions were merely impressions, their acceptance as jurors is not error.—STATE v. TAYLOR, Mo., 35 S. W. Rep. 92.

31. CRIMINAL LAW—Use of Witness not Named on Indictment.—A notice by a county attorney of the intention to use a witness whose name is not on the indictment is not rendered insufficient by the fact that it states, as one of the facts expected to be proved by the witness, that defendant stole the property charged in the indictment from a certain place, the connection showing that the word "stole" was used in the sense of taking and carrying away.—STATE v. HALL, Iowa, 66 N. W. Rep. 725.

32. CRIMINAL LAW—Warehousemen — Conversion of Stored Wheat.—Rev. St. 1894, § 8726 (Rev. St. 1881, § 6547), provides that no warehouseman shall sell or remove from his control any goods for which a receipt has been given without the written consent of the holder of such receipt, and section 8728, Rev. St. 1894 (section 6549, Rev. St. 1881), makes "any warehouseman" violating such section indictable: Held, that an information against a warehouseman for disposing of wheat without the written consent of the holder of the warehouse receipt need not allege that the defendant was a public warehouseman.—MILLER v. STATE, Ind., 43 N. E. Rep. 440.

33. DEATH BY WRONGFUL ACT — Action by Administrator.—Under Rev. St. 1894, § 285 (Rev. St. 1881, § 284), authorizing an administrator to maintain an action on the ground of negligence to recover for a personal injury resulting in the death of his decedent, where the facts are such that the deceased might have maintained an action had he lived, the administrator is required, as the decedent would have been, to allege and prove freedom from contributory negligence; and where, in such case, there were no witnesses to the injury, and there is no evidence tending to show whether it was due to the negligence of the defendant or the deceased, a verdict for the defendant should be directed.—KAUFFMAN v. CLEVELAND, C. C. & ST. L. RY. CO., Ind., 43 N. E. Rep. 446.

34. DEED—Cancellation—Fraud.—An attorney, in the interest of himself and an associate, by fraudulently representing that the land was held in adverse possession, obtained from the owners authority to recover it, or compromise with the claimants, he to receive one-half the land or proceeds for his services, and subsequently, on an alleged compromise, obtained a conveyance from the owners to the supposed adverse claimants in trust for himself, receiving himself one-half the amount of the compromise. The trustee conveyed to the associate: Held, that the associate was charged with fraud of the attorney, and the deed would be set aside.—HORTER v. HERNDON, Tex., 35 S. W. Rep. 80.

35. DRAINAGE — Assessment.—Where the lands of an owner, by reason of their situation, are provided with sufficient natural drainage, they are not liable for the costs and expense of a ditch necessary for the drainage of other lands, simply for the reason that the surface water of his lands naturally drain therefrom to and upon the lands requiring artificial drainage.—BLUE v. WENTZ, Ohio, 43 N. E. Rep. 493.

36. EASEMENTS—Creation.—Where, in a suit to enjoin interference by defendant with an easement claimed by plaintiff over certain land, defendant merely claims in his answer ownership of the land through possession, and a common source of title is traced to him, it is *prima facie* evidence that he is in under such title.—SMITH v. YOUNG, Ill., 43 N. E. Rep. 486.

37. EJECTMENT—Alienee of Mortgagee in Possession.—An alienee of a mortgagee, who claimed title under a foreclosure sale, acquires all the rights of the mortgagee, even though the foreclosure sale is void for irregularity, so as not to bar the equity of redemption. Being in the position of a mortgagee in possession after breach of condition, with the debt unpaid, he has a good defense to an ejectment brought on the bare legal title.—BRYAN v. BRASIUS, U. S. S. C., 16 S. C. Rep. 803.

38. EJECTMENT—Railroads — Condemnation Proceedings.—Ejectment will not lie against a railroad company for land upon which, after a report in its favor by commissioners duly appointed, and payment into court of the damages assessed, it has entered for construction of its road, notwithstanding the proceedings were still pending, since it has the right of possession under Code, § 1081, authorizing it, under such circumstances, to enter for such purpose.—RUDD v. FARMVILLE & P. R. CO., Va., 24 S. E. Rep. 386.

39. EVIDENCE—Admissions.—In an action for seizure of plaintiff's goods under attachments against another, receipts from a third person, acknowledging the receipt from plaintiff of the rent of the premises from which the goods were taken, are hearsay, and inadmissible to prove payment of such rent by him.—SILVERSTEIN v. O'BRIEN, Mass., 43 N. E. Rep. 496.

40. EXECUTION—Exemptions—Right of Partner.—Under the rule that one partner cannot claim exemptions from execution on a judgment against the partnership without his copartner's consent, surviving partners cannot claim exemptions without the consent of the administrator of a deceased partner.—RICHARDSON v. REDD, N. Car., 24 S. E. Rep. 420.

41. FEDERAL COURTS—Jurisdiction—Enjoining Boycott.—In a suit by a Missouri corporation to enjoin certain trades unions or assemblies, and their members, from instituting a boycott, the federal court has no jurisdiction of individual defendants who are citizens of Missouri, nor can the association be sued as a body, or members thereof enjoined who are not parties to the record.—OXLEY STAVE CO. v. COOPERS' INTERNATIONAL UNION OF NORTH AMERICA, U. S. C. C. (Kan.), 72 Fed. Rep. 695.

42. FEDERAL COURTS—Jurisdiction of Supreme Court —State Courts.—In an action brought in a State court to recover an assessment on the unpaid stock of a corporation, made by a decree of a court of another State, a decision overruling a contention that the decree was entitled to full faith and credit as a judgment against the defendant, and permitting defendant to rely on the State statute of limitations, is reviewable in the Supreme Court of the United States, but that court must judge for itself of the true nature and effect of the order making the assessment.—GREAT WESTERN TEL. CO. v. PURDY, U. S. S. C., 16 S. C. Rep. 810.

43. FEDERAL OFFENSE—Mailing Obscene Document.—An indictment for depositing in the mail an obscene document, which alleges that the document in question is so obscene and indecent that the same would be offensive to the court, and improper to be placed upon the records thereof, wherefore the grand jurors do not set forth the same, and which does not set forth the document mailed, nor describe the same so as to furnish means of identifying it, is insufficient.—UNITED STATES v. FULLER, U. S. D. C. (Oreg.), 72 Fed. Rep. 771.

44. FEDERAL OFFENSE—Postal Laws — Obscene Letter.—An officer of the United States who carries on a correspondence with one suspected of using the mails for illegal purposes, in order to obtain evidence on which to base a prosecution, is not thereby disqualified from testifying in respect to an offense committed by defendant in the course of such correspondence.—ANDREWS v. UNITED STATES, U. S. S. C., 16 S. C. Rep. 798.

45. FEDERAL OFFENSE—Violation of Postal Laws—Embezzling Letters.—In an indictment charging a letter carrier with embezzling and stealing letters containing money, it is no defense that such letters were decoy letters.—MONTGOMERY v. UNITED STATES, U. S. S. C., 16 S. C. Rep. 797.

46. FRAUDULENT CONVEYANCES—Assignment for Benefit of Creditors.—A mortgage of a debtor's entire stock to secure the claim of a creditor who had assumed other *bona fide* indebtedness of his debtor for the purpose of procuring a loan for the latter is valid, notwithstanding a fraudulent intent on the part of the mortgagor, if the mortgagee had no knowledge of such intent, nor of facts which should have put him on inquiry.—ROBERTS v. PRESS, Iowa, 66 N. W. Rep. 756.

47. GARNISHMENT.—The clerk of a court is not disqualified from issuing a writ of garnishment or taking the answers of garnishees in a proceeding in such court because of the fact that he is included with them in the writ, nor is the validity of the proceedings affected by his approval of a bond for garnishment, no such bond being required by law.—WOMACK v. STOKES, Tex., 35 S. W. Rep. 82.

48. GUARDIAN OF INFANT — Appointment.—A court has no jurisdiction to appoint a guardian of infants absent from the State, though their domicile be within it.—DE LA MONTANYA v. DE LA MONTANYA, Cal., 44 Pac. Rep. 354.

49. HIGHWAY — Obstruction—Indictment.—Evidence that the owner of land lived thereon while a road was being used for 13 years by the public, over the land, and that he himself traveled the road, is sufficient to prove knowledge on the owner's part of the use of the road as a highway so as to establish a highway by prescription under the law prior to 1873.—STATE v. TEETERS, Iowa, 66 N. W. Rep. 754.

50. HOMESTEAD—Actual Residence. — An insolvent and his wife owned jointly a tract of land; the wife owning in her own right part of the tract, designated by metes and bounds. The land owned by the husband adjoined that of the wife, and the whole tract was used and cultivated as one farm. The house in which they lived was on the tract to which the wife had the fee, and contiguous to that of the husband: Held, that the husband is entitled to a homestead in the tract to which he held the fee, even though actual residence was on land owned by the wife.—MASON v. COLUMBIA FINANCE & TRUST CO., Ky., 35 S. W. Rep. 115.

51. HOMESTEAD — Conveyance by Husband.—Const. 1876, art. 16, § 50, forbidding a married man to sell the homestead without consent of the wife, means the alienation, not merely of the wife's homestead right, but of the property itself; and a deed by the husband in violation of such inhibition is ineffectual for any purpose.—STALLINGS v. HULLUM, Tex., 35 S. W. Rep. 2.

52. HOMESTEAD EXEMPTION—City Property.—Under Const. 1876, art. 16, § 51, declaring that the homestead in a city shall consist of a lot or lots not to exceed a certain value used for the purposes of a home, "or as a place to exercise the calling or business of the head of a family," a lot used by a gardener for the cultivation of produce, and separated from his dwelling by streets is exempt.—WAGGENER v. HASKELL, Tex., 35 S. W. Rep. 1.

53. HOMESTEAD—Vendor's Lien—Note.—A landowner, who is a widower, may, in consideration of the renewal of a purchase-money note which is a lien on a portion of his homestead, extend the lien by the provisions of the new note to cover the whole tract.—STOKER v. PATTON, Tex., 35 S. W. Rep. 64.

54. HUSBAND AND WIFE—Community Property.—The surviving widow has power to convey community property in payment of community debts, without regard to its being exempt.—NELMS v. NAGLE, Tex., 35 S. W. Rep. 60.

55. HUSBAND AND WIFE—Conveyance of Wife's Land.—Under the Texas statute requiring that there shall be a joint conveyance from the husband and wife of the separate property of the wife, a deed of the wife's land executed by her in her own right, and as attorney in fact of her husband, conveys a good title.—ROGERS v. ROBERTS, Tex., 35 S. W. Rep. 77.

56. HUSBAND AND WIFE—Minority of Husband.—A husband, whether a minor or of contracting age, has the right to sue for the recovery of all community interests, and a husband who is a minor, and who sues by his next friend to recover damages on account of a nuisance, may recover for the injury sustained by both himself and his wife, to the same extent as though of full age and suing in his own name.—TEXAS & P. RY. CO. v. ALEXANDER, Tex., 35 S. W. Rep. 9.

57. INJUNCTION — Conspiracy — Unlawful Combinations.—A conspiracy to prevent the loading or unloading of a vessel, except by such labor as may be acceptable to defendants, may be enjoined, though no particular overt act against that particular vessel is alleged or proved.—ELDER v. WHITESIDES, U. S. C. C. (La.), 72 Fed. Rep. 724.

58. INJUNCTION—Damages.—Damages for suing out an injunction, in the absence of malice and want of probable cause, can only be recovered in an action on the undertaking which Rev. St. 1894, § 1167, requires the plaintiff to give.—HARLESS v. CONSUMERS' GAS TRUST CO., Ind., 43 N. E. Rep. 456.

59. INJUNCTION—Damages—Prima Facie Case.—In an action on an injunction bond, plaintiff makes out a *prima facie* case by establishing the dissolution of the temporary injunction, and the dismissal of the original suit, and the burden is on defendant to show that the injunction was rightfully issued.—FINDLAY v. CARSON, Iowa, 66 N. W. Rep. 759.

60. INJUNCTION—Motion to Dissolve.—On application for injunction, a hearing was had on petition and affidavits, and a temporary injunction was granted. Afterwards, upon a supplemental petition being filed, another temporary injunction was granted *ex parte*, after which defendants filed a motion to dissolve both injunctions: Held, that the hearing on the first petition was not equivalent to a hearing on a motion to dissolve, within Code, § 3402, providing that only one motion to dissolve or modify an injunction upon the whole cause shall be allowed.—HINKLE v. SADDLER, Iowa, 66 N. W. Rep. 765.

61. INSOLVENCY—What Constitutes.—Where a milling company whose mill and contents were burned continues in such business, as is natural under the circumstances, collecting such assets as it can, paying debts from time to time, holding meetings of its directors, and though some of the directors thought the company was insolvent, others did not, until, the company being held liable for wheat stored in the mill, a bill was filed to wind up its affairs, there was no such overt act of insolvency as would constitute its assets a trust fund for the benefit of creditors, and defeat the acquisition by a creditor of a priority by means of

judgment and garnishment.—MCCLAREN V. UNION ROLLER MILL & ELEVATOR CO., Tenn., 35 S. W. Rep. 88.

62. INSURANCE—Action Prematurely Brought.—Under McClain's Code, § 1734, prohibiting the bringing of an action to recover on an insurance policy within 90 days after notice of loss is given, where an action is brought before the expiration of such time the objection may be raised by motion in arrest of judgment, and is not waived because not sooner made.—WOODCOOK V. HAWKEYE INS. CO., Iowa, 66 N. W. Rep. 764.

63. INSURANCE—Actions—Pleading.—A complainant in an action on a fire insurance policy, showing that suit was commenced more than 90 days after the loss, but failing to show when proofs of loss were made, is not subject to exception, on the ground that it does not show that the cause of action had accrued, because it does not show that sixty days had elapsed after proofs of loss.—PENNSYLVANIA FIRE INS. CO. V. FAIRIES, Tex., 35 S. W. Rep. 55.

64. INSURANCE—Failure to Disclose Mortgage.—A fire policy is not vitiated by the presence of a mortgage on the property and failure of insured to voluntarily disclose that fact, the policy having been issued without any inquiries or representations having been made, though the policy provides that it shall be void "if the assured has concealed or misrepresented, in writing or otherwise, any material fact or circumstance concerning this insurance or the subject thereof, or if the interest of the insured in the property be not truly stated therein."—MOROTOCK INS. CO. V. RODEFER, Va., 24 S. E. Rep. 393.

65. INSURANCE — Oral Contract—Power of Agent.—In the absence of statutory provision, unless its powers are restricted by by-law, a mutual insurance company may make valid oral contracts of insurance, and a general custom and usage of such companies that their agents for the solicitation of business may bind them until notice of the refusal of the risk is received by the agent and communicated to the applicant, may be shown in a proper case.—BROWN V. FRANKLIN MUTUAL FIRE INS. CO., Mass., 43 N. E. Rep. 512.

66. INSURANCE—Vacant Premises — Waiver of Condition.—The fact that a fire policy was issued, and the premium accepted, with knowledge that the building was vacant, is not a waiver of a condition rendering the policy void if the building became vacant or unoccupied, and remained so "for ten days."—QUEEN INS. CO. OF AMERICA V. CHADWICK, Tex., 35 S. W. Rep. 26.

67. JUDGMENT — Allotment of Dower.—A judgment allotting dower to a widow in all the lands of which her husband died seised, all the heirs and adverse claimants being parties thereto, is conclusive as to the title of the husband and the rights of the wife growing out of his estate, and will operate to estop the widow from afterwards maintaining an action to subject a portion of the lands to a parol trust in her favor, on the ground that the husband purchased such portion with money received from her separate estate.—BOYD V. REDD, N. Car., 24 S. E. Rep. 429.

68. JUDGMENT—Eminent Domain.—Where, in an action for damages to land caused by opening a county road through it, interest on the damages is not demanded in the complaint, nor allowed in the verdict, and there is no evidence that defendant has yet been deprived of the use of the land to be taken, interest is allowable on the damages only from rendition of the judgment.—MORRIS V. COLEMAN COUNTY, Tex., 35 S. W. Rep. 29.

69. JUDGMENT—In Actions against Joint Obligors.—Rev. St. § 2884, authorizing a court, in an action against defendants jointly liable on a contract, but some of whom are not served, to enter judgment, in form, against all the defendants, so far as that it may be enforced against joint property, though permissive in form, becomes mandatory when required by the rights of a defendant; and, in an action against partners, one who is served has the right to insist on the entry of such judgment, so that it may be enforced against the property of the firm.—BRAWLEY V. MITCHELL, Wis., 66 N. W. Rep. 799.

70. JUDGMENT — Res Judicata.—In an action by a widow to recover the amount due under an antenuptial agreement giving her the right to certain produce and a stated sum yearly from the husband's estate after his death, a prior judgment in an action between the same parties is not *res judicata* as to a claim for produce which had not fully matured when the issues in the former action were made up.—FRANKE V. FRANKE, Ind., 43 N. E. Rep. 468.

71. LANDLORD AND TENANT—Recovery of Possession.—In an action by a landlord to recover possession of premises from a tenant alleged to be wrongfully holding over, defendant may, under a general denial, show that there had been an extension of the old lease, or that he was in possession as tenant by virtue of some new contract with the landlord.—HAMLIN V. ENGLE, Ind., 43 N. E. Rep. 468.

72. LANDLORD AND TENANT—Trade Fixture.—A lease provided that the lessee should erect a storehouse within six months, and should have a renewal for a second term, unless the lessor elected not to renew, in which case the lessor would pay for the building; and it appeared that the lessee was allowed to enter three months before the term began, in order to complete the building within the time stated: Held, that the building was part consideration for the lease and renewal, and did not become a trade fixture, removable at the end of the second term.—PIERCE V. GRICE, Va., 24 S. E. Rep. 392.

73. LIMITATIONS—Action against Devisee.—Where no letters of administration are granted on the estate of a decedent within three years after his death, a cause of action arises under Code Civ. Proc. § 1844, subd. 1, against the heir or devisee in favor of the creditors of the decedent, and the subsequent granting of letters will not have the effect to bring the claims within subdivision 2 of such section, and further suspend the action against the heir or devisee for three years from their issue.—ADAMS V. FASSETT, N. Y., 43 N. E. Rep. 408.

74. MARRIAGE SETTLEMENT — Revocation.—A woman who has made a voluntary antenuptial settlement by trust deed, and, in so doing, acted freely and intelligently, and understood the contents of the deed before she executed it, cannot have it set aside on her testimony that she did not understand its legal effect.—TAYLOR V. BUTTRICK, Mass., 43 N. E. Rep. 507.

75. MASTER AND SERVANT—Defective Cars — Negligence.—A brakeman cannot, as a matter of law, be held to be negligent in failing to discover that the bumpers on cars he is about to couple were rotten, and so defective as to permit the cars to come almost together, so as to prevent a recovery for his death, caused by such defects.—CHESAPEAKE & O. RY. CO. V. LASH'S AD'MR., Va., 24 S. E. Rep. 385.

76. MASTER AND SERVANT—Independent Contractors.—It appeared that defendants, desiring to erect a brick barn, contracted with certain mechanics for its construction; that the contract for the brick work was let to H, and provided that the scaffolding should be furnished by the brick layer, and that the work should be done under the direction of the architect and defendants and to their entire satisfaction; that the contract for the carpenter work was let under similar conditions to another mechanic; that defendant had no control over the employees of such contractors, or over the method in which the work should be performed; and that plaintiff was employed by H as a brick layer on the building: Held, that the mechanics were independent contractors, and that defendants were not liable for injuries which happened to the servants of such contractors through negligence of the contractors or their servants.—HUMPTON V. UNTERKIRCHER, Iowa, 66 N. W. Rep. 776.

77. MASTER AND SERVANT — Injuries to Employee—Contributory Negligence.—A master was not liable for

injuries to an employee due to machinery being out of order, where he was not informed of the particular defect causing the accident, though he was informed of other defects in the machine.—SCHULZ v. ROHE, N. Y., 43 N. E. Rep. 420.

78. MASTER AND SERVANT — Negligence—Assumption of Risk.—In an action for personal injury, where defense pleaded assumption of the risks of the employment and contributory negligence, the refusal to give instructions to the effect that if the plaintiff, because of his age, understanding, and experience, knew and comprehended the dangers, or if, from all the circumstances, he ought to have known and comprehended such dangers, the jury should find that he assumed the risk of such injury as incidental to his employment, is error.—KLATT v. N. C. FOSTER LUMBER CO., Wis., 66 N. W. Rep. 791.

79. MORTGAGE — After-acquired Interests.—Code, § 1931 (providing that, when a deed purports to convey greater interests than the grantor at the time possessed, an after-acquired interest inures to the benefit of the grantee), does not apply where a mortgagor holding an undivided four-sevenths of a tract of land, and intending to convey only his interests, it being so understood by the grantee, by mistake conveys the whole estate, and the title to the remaining three-sevenths is afterwards acquired by him.—COOK v. PRINDLE, Iowa, 66 N. W. Rep. 781.

80. MORTGAGE—Foreclosure.—Under Rev. St. § 3187, providing that, in an action affecting title to real estate, plaintiff, at the time of filing the complaint, or any time thereafter before judgment, may file a notice of the pendency of the action, and that in a foreclosure of a mortgage such notice must be filed 20 days before judgment, the notice of pendency does not become operative until the complaint is filed, and a judgment of foreclosure rendered on the same day the complaint is filed, though more than 20 days after the filing of notice, is premature.—GILE v. COLBY, Wis., 66 N. W. Rep. 802.

81. MORTGAGE FORECLOSURE — Reversal after Sale.—There is no substantial difference in the basis on which restitution is required at law and in equity. It is ordered at law when conditions existing would require it in equity, and the law courts can protect the equities of all the parties. It may be refused at law because its processes are not adequate to do full justice in the premises; and in equity the matter rests somewhat in the sound discretion of the chancellor, who may, when the equities require or justify it, impose conditions, as a prerequisite to the relief.—ALABAMA & G. MANUF'G CO. v. ROBINSON, U. S. C. C. of App., 72 Fed. Rep. 708.

82. MORTGAGES—Consideration—Parol Evidence.—In an action on a note, where defendant claimed to be surety only, and it appeared that the principal had given a mortgage to plaintiff covering the property for which the note sued on was given, the consideration stated in the mortgage not including the note in suit, it was proper to allow defendant, he not being a party to the mortgage, to show by parol that, as part of the consideration of the mortgage, it was agreed by plaintiff that he would release defendant from all liability on the note.—DE GOEY v. VAN WYK, Iowa, 66 N. W. Rep. 787.

83. MORTGAGES—Subsequent Grantee—Surety.—The transfer of property incumbered by trust deed, to one who assumes the mortgage, with the consent of the insurer of the property, the trustee and the beneficiary, converts the original mortgagor from principal to surety, as between all the parties, and entitles him to all the rights of a surety.—MERCHANTS' INS. CO. OF NEW YORK v. STORY, Tex., 35 S. W. Rep. 68.

84. MUNICIPAL CORPORATION—Abatement of Nuisance.—A municipal corporation, in the exercise of a granted power to "restrain, prohibit, or suppress" a public nuisance, may, under proper circumstances, invoke the aid of a court of equity.—CITY OF HURON v. BANK OF VOLGA, S. Dak., 66 N. W. Rep. 815.

85. MUNICIPAL CORPORATIONS — Closing Streets.—A municipal corporation has no implied authority to close a public alley to allow the land to revert to the owners of the abutting property for a moneyed consideration against the will of persons owning lots in the square through which the alley runs, and who have an easement over it.—CITY OF LOUISVILLE v. BANNON, Ky., 35 S. W. Rep. 120.

86. MUNICIPAL CORPORATION—Contract with City.—Where a claim is made against a city for injuries, and the city council, on report of a committee, allows the claimant a certain amount, less than the sum claimed, a demand by the claimant in writing, on the city treasurer, for an order, after such allowance, and before any proceedings are taken to reconsider the matter, constitutes an acceptance completing the contract by the city to pay the sum allowed.—SHARP v. CITY OF MAUSTON, Wis., 66 N. W. Rep. 803.

87. MUNICIPAL CORPORATIONS—Defective Sidewalk—Liability for Injuries.—In an action for injuries resulting from a fall caused by ice which accumulated during the previous night on a sidewalk at a point where the city had lowered the street grade, and changed the sidewalk so as to cause it to gradually incline for a short distance in order to reach the lower grade at the crossing, plaintiff was not entitled to recover, where the facts were not sufficient to warrant the court in inferring that the city was negligent either in adopting the grade or making the improvement.—MCQUEEN v. CITY OF ELKHART, Ind., 43 N. E. Rep. 460.

88. MUNICIPAL CORPORATIONS—Defective Streets.—In an action for injuries caused by defective street the court could not assume, from the fact that plaintiff had previous knowledge of the defects that he actually saw and understood the condition of the street at the time of the accident, since plaintiff had a right to assume that defendant had discharged its duty by removing the defects, and to act on that assumption.—THOMPSON v. CITY OF WINSTON, N. Car., 24 S. E. Rep. 421.

89. MUNICIPAL CORPORATION—Injury from Defective Street.—The charter of the city of Dallas (section 165), providing that no action shall be maintained against the city for injuries from defective streets, sidewalks, or sewers, "or other things being out of repair from gross negligence of said city, unless the same shall have remained so for ten days after special notice in writing given to the mayor or city engineer," does not exempt the city, in the absence of such notice, from liability for ordinary negligence.—PEACOCK v. CITY OF DALLAS, Tex., 35 S. W. Rep. 8.

90. MUNICIPAL CORPORATIONS—Powers.—A municipal corporation is not liable for negligence in performance of any duty, whether legislative or judicial, or for a failure to perform such duty, but is liable for negligence arising from the exercise of the privileges granted, or for neglect to perform a ministerial duty.—VAUGHTMAN v. TOWN OF WATERLOO, Ind., 43 N. E. Rep. 476.

91. NEGLIGENCE—Presumption—Derailment of Train.—Though, ordinarily, in an action for damages arising from negligence, the negligence charged must be proved by the plaintiff, when the injury complained of arises from an accident which, in itself, is indicative of negligence, such as the derailment of a train of cars, the plaintiff is relieved from the burden of further proving the defendant's negligence, as the law presumes its existence. It is not, therefore, necessary for the plaintiff, in an action for damages caused by the derailment of a logging train, to prove that running such train at any given rate of speed was dangerous, in order to justify the submission to the jury of the question of defendant's negligence in running it at too high a speed.—ALBION LUMBER CO. v. DE NOBRA, U. S. C. C. of App., 72 Fed. Rep. 739.

92. NEGOTIABLE INSTRUMENT — Notes — Protest — Waiver.—Where waiver of protest and notice is embodied in the note, it is binding upon subsequent in-

dorsers. — LEEDS V. HAMILTON PAINT & GLASS CO., Tex., 35 S. W. Rep. 77.

93. NEGOTIABLE INSTRUMENTS — Indorsee after Maturity.—An indorsee of a note after maturity, whose indorser, before transfer of the note, forged a similar note, which was negotiated by him, and paid by the maker of the genuine note without notice that it was not the genuine note, cannot recover from the maker. —LEACH V. FUNK, Iowa, 66 N. W. Rep. 768.

94. NEGOTIABLE INSTRUMENTS — Notes — Consideration.—A note given for money theretofore loaned by the payee to the maker is supported by a valuable consideration.—WOOLEY V. COBB, Mass., 43 N. E. Rep. 497.

95. PARTITION.—One of several persons who together inherited from the same person two tracts of land may, without his complaint being open to the objection of improperly uniting several causes of action, maintain an action for partition of the two lots, against his coheirs and persons to whom they have conveyed an interest in one or the other or both of the lots.—GRADY V. CANNON, Wis., 66 N. W. Rep. 808.

96. PARTITION—Wife's Agreement—Acknowledgment. —A wife's agreement to partition of land in which she has an interest is not void because there was no privy acknowledgment of its execution.—BETTS V. SIMONS, Tex., 35 S. W. Rep. 50.

97. PLEADING—Amendment.—In an action against a railway company for damages caused by a fire started by an engine on its right of way, it is an abuse of discretion to allow an amendment of the complaint, three years after limitations would have run against the action, so as to include a recovery for damages from burning vegetation on other land than that included in the original complaint, and situated a mile therefrom.—O'CONNOR V. CHICAGO & N. W. RY. CO., Wis., 66 N. W. Rep. 795.

98. PLEDGE.—One employed on a salary to sell goods which are put into his manual possession is a person "intrusted with merchandise and having authority to sell or consign the same," within Pub. St. ch. 71, § 3, protecting one who receives goods from such person, and advances money thereon, in good faith, believing him to be the actual owner.—CAIRNS V. PAGE, Mass., 43 N. E. Rep. 503.

99. PRACTICE — Dismissal. — The absence from the custody of the clerk of the papers in a case, they being in the possession of the plaintiff's attorney, does not affect the validity of the order dismissing the case for want of prosecution.—FONES V. RICE, Tex., 35 S. W. Rep. 44.

100. PRINCIPAL AND AGENT—Authority—Revocation. —Oral authority to sell personal property, if given as security for a claim, and based on a consideration valid within the law applicable to executory contracts, is irrevocable.—TERWILLIGER V. ONTARIO, C. & S. R. Co., N. Y., 43 N. E. Rep. 432.

101. PRINCIPAL AND AGENT—Authority to Sell.—An agent for the sale of land has no authority to sell posts cut from said land, and cannot recover the value thereof from his vendee, though he intended, after payment by the vendee, to settle with the owner of said land.—ST. LOUIS S. W. RY. CO. OF TEXAS V. BRAMLETTE, Tex., 35 S. W. Rep. 25.

102. PUBLIC LANDS—Decisions of Land Department. —The decisions of the land department in contested cases are conclusive only as to matters of fact within their jurisdiction, and a patent is not evidence of title to land which was not subject to disposition by the United States; but the question whether land included within a patent was, at the time of the issue thereof, a part of the public domain, or subject to such disposition, is always open for consideration.—NORTHERN PAC. R. CO. V. MCCORMICK, U. S. C. C. of App., 72 Fed. Rep. 736.

103. PUBLIC LANDS — Homestead.—The requirement that one, at the time of application for survey of land as a homestead donation must be an actual settler thereon, is not satisfied by anything less than that applicant be at that time personally living thereon.— BRINKLEY V. SMITH, Tex., 35 S. W. Rep. 48.

104. QUO WARRANTO — Limitations.—A *quo warranto* proceeding prosecuted by the State, for the purpose of ousting one charged with unlawfully exercising the office of a police magistrate, is not affected by the statute of limitations barring ordinary civil actions.—MCPHAIL V. PEOPLE, Ill., 43 N. E. Rep. 882.

105. RAILROAD COMPANIES—Crossing Tracks—Negligence.—A person, in crossing the tracks of a railway company laid upon a street, is not required to use "extraordinary" care, but only such care as ordinarily careful and prudent persons would have exercised under the circumstances.—GOODRICH V. BURLINGTON, C. R. & N. RY. CO., Iowa, 66 N. W. Rep. 770.

106. RAILROAD COMPANY — Electric Railroad — Damages.—A street car company using electricity is bound to employ the best mechanical contrivances and inventions, and evidence that a particular trolley wire has been the subject of frequently recurring accidents is admissible, as showing that the company had notice of its unsafe condition.—RICHMOND RAILWAY & ELECTRIC CO. V. BOWLES, Va., 24 S. E. Rep. 388.

107. RAILROAD COMPANIES — Injuries to Person on Track.—A railway company is liable for injuries to an intoxicated person upon its tracks when, after the negligence of such person in going upon the track, the engineer of the train, by the exercise of ordinary care, could have avoided injuries to him.—BAKER V. WILMINGTON & W. R. CO., N. Car., 24 S. E. Rep. 415.

108. RAILROAD COMPANY—Location of Road.—Where a railroad was located so as to divide plaintiff's land, and in awarding damages the county commissioners took into consideration the fact that no right of crossing had been reserved for plaintiff, plaintiff cannot afterwards assert a legal right to a crossing.—NEW YORK, N. H. & H. R. CO. V. MILLER, Mass., 43 N. E. Rep. 499.

109. RAILROAD COMPANIES—Public Crossing.—Sayles' Civ. St., art. 4170*b*, requiring every railroad "to place and keep that portion of its roadbed and right of way over or across which any public county road may run, in proper condition for the use of the traveling public," requires a condition reasonably suitable for the ordinary public travel.—ST. LOUIS S. W. RY. CO. OF TEXAS V. BYAS, Tex., 35 S. W. Rep. 22.

110. RAILROAD COMPANY — Street Railways — Negligence.—In an action against an electric street railway for negligence resulting in the death of plaintiff's intestate, where it appeared that deceased was killed while attempting to cross defendant's tracks, an instruction that, when the motorman saw deceased was proceeding as though to cross the track, it would be his duty, so far as he was able, to reduce the speed of his car and stop the same before reaching the point where deceased was crossing, was properly refused.— GALBRAITH V. WEST END ST. RY. CO., Mass., 43 N. E. Rep. 501.

111. REAL ESTATE AGENT—Authority to Sell Land.— The power of an agent to execute a binding contract for the sale of land may be established by letters and telegrams received from his principal.—FARRELL V. EDWARDS, S. Dak., 66 N. W. Rep. 812.

112. REAL ESTATE BROKERS—Commission.—Where a broker employed to sell defendant's farm on commission produces a purchaser who takes the property at a price fixed by defendant, the latter cannot withhold the commission on the ground that when the contract of employment was made the broker had, unknown to defendant, already found the customer, and was employed by him to buy a farm, but from whom he was to receive no commission.—DONOHUE V. PADDEN, Wis., 66 N. W. Rep. 804.

113. REMOVAL OF CAUSES — Diverse Citizenship — Fraudulent Joinder.—In order to justify the removal to a federal court of a suit in which one of the defendants are citizens of the same State as the plaintiff, on the

ground that such defendants have been fraudulently joined to defeat the jurisdiction of the federal court, it must appear not only that they were joined for that purpose, but that no cause of action is stated against them, or that they are in law improperly joined, or that the averments of fact on which a joint liability is asserted are so palpably untrue or unfounded as to make it improbable that the plaintiff could have inserted them in good faith.—HUKILL V. MAYSVILLE & B. S. R. CO., U. S. C. C. (Ky.), 72 Fed. Rep. 745.

114. REPLEVIN — Attaching Creditors. — In replevin against a sheriff for attached property, the attachment plaintiff, his rights being dependent upon the validity of the attachment, after default judgment has been rendered against the sheriff, cannot, by intervention, enforce his rights under the attachment, the default judgment not being set aside.—DUPONT & CO. V. AMOS, Iowa, 66 N. W. Rep. 774.

115. SALE — Principal and Agent — Warranty. — In a joint action by several plaintiffs for a breach of warranty, it appeared that defendants sold them a horse warranted as sound; that defendants sent the horse out in care of their agent, and under an agreement with plaintiff B that if he would introduce the agent to his neighbors, and board him pending a sale, they would give him a share of $100. *Held*, that B was not defendant's agent in making the sale.—SNYDER V. BAKER, Tex., 34 S. W. Rep. 981.

116. SCHOOL DISTRICTS — Apportionment of Town Funds.—A newly-formed school district, whose report, made under Supl. Rev. St., § 462, does not show it to have maintained a school, is not entitled to share in the town school fund, the apportionment of which, under Rev. St., § 558, can be made only to such districts as have maintained a school for at least six months during the year past. — JOINT SCHOOL DIST. NO. 8, TOWN OF HARMONY, V. SCHOOL DISTRICT NO. 5, TOWN OF HARMONY, Wis., 66 N. W. Rep. 794.

117. SET-OFF AND COUNTERCLAIM—When Allowable.—In an action on a note given by defendant to a corporation in payment for stock, and assigned to plaintiff after maturity as collateral security for a debt, the corporation having afterwards become insolvent and having gone into the hands of the receiver, defendant may properly plead, by way of set-off, a claim against the corporation for services rendered under a written agreement for employment in consideration of the purchase of the stock.—INDIANA NOVELTY MANUF'G CO. V. MCGILL, Ind., 43 N. E. Rep. 464.

118. STATUTES — Enactment.—The journals of the house and senate relating to the passage of an act are inadmissible to show that constitutional provisions in regard to the manner of its passage were not complied with.—COMMONWEALTH V. SHELTON, Ky., 35 S. W. Rep. 128.

119. TAXATION—Corporations—Assessment.—The organization of a corporation to make and sell loans after its articles of incorporation had been filed, and blank applications for loans, notes, and mortgages had been procured for it by the promoters, was abandoned; no stock having been issued or other property than the blanks acquired. These were assigned in blank by the corporation, and divided among the promoters, who never became members of the corporation: Held, that the corporation was not subject to assessment as the owner of notes and mortgages appearing in its name in the county recorder's office through the blanks being used by the promoters in their own business.—FARMERS' LOAN & TRUST CO. V. CITY OF NEWTON, Iowa, 66 N. W. Rep. 784.

120. TAXATION—Exemptions—Estoppel.—Where the business manager of a religious order, with others, procured the incorporation of a town, and, at his instance, part of the land belonging to the order was included within the limits of the town, and town taxes thereon paid by him for a number of years, the order was estopped from claiming that the land so included was exempt from taxation, though it had not been laid off into town lots, and was used for farming purposes.—BENEDICTINE ORDER OF COVINGTON V. TOWN OF CENTRAL COVINGTON, Ky., 34 S. W. Rep. 896.

121. TELEGRAPH COMPANY — Negligence.—One who delivered a message written on a plain piece of paper to a telegraph company's agent, away from the office, was not bound by printed conditions subsequently attached exempting the company from liability until messages were presented to and accepted at one of its transmitting offices.—WESTERN UNION TEL. CO. V. PRUETT, Tex., 35 S. W. Rep. 78.

122. TRUST—Construction of Deed.—A conveyance of land to a trustee for the sole use and benefit of a daughter-in-law of the grantor and her children, where the trust was passive, no act being required of the trustee, vested both the use and title at once in the beneficiaries, and a mere request contained in the deed that the husband (the grantor's son) should reside on the land during his life does not vest him with any estate therein.—FOSTER V. GLOVER, S. Car., 24 S. E. Rep. 370.

123. TRUST—Resulting Trusts—Set-off.—Where money loaned is furnished by the wife, and the note and mortgage therefor is taken in the husband's name, the wife becomes the equitable owner thereof, without any assignment to her; and the borrower cannot set off against his liability thereon an indebtedness from the husband to him.—HOUCK V. SOMERS, N. Car., 24 S. E. Rep. 429.

124. VENDOR AND PURCHASER—Action for Purchase Money.—Where a contract for the sale of land contained a power authorizing the vendor to sell the land on default in the payment of any one of the notes given for purchase money at maturity, his executor may bring an action of foreclosure without waiting for the maturity of the last note.—MCQUEEN V. SMITH, N. Car., 24 S. E. Rep. 412.

125. VENDOR AND PURCHASER — Contract.—A stipulation that the grantor may retain all payments made or secured, in case the grantee fails to perform a contract for the sale of land, containing covenants and conditions, the number and nature of which made it impracticable to fix the actual damage in case of a breach thereof, is not void under section 3581 of the Compiled Laws of this State.—BARNES V. CLEMENT, S. Dak., 66 N. W. Rep. 810.

126. VENDOR'S LIEN.—W sold land to defendant, taking a note from him for $2,700 in part payment. Subsequently plaintiff sold land to W, agreeing to take the note of defendant, if it was purchase money paper, in part payment. Defendant thereupon executed a note to plaintiff for the amount of the unpaid purchase price on the sale to W, and another note to W for the balance of the $2,700 note due W on the purchase by defendant: Held, that the note by defendant to plaintiff carried a vendor's lien on the land sold defendant by W.—UPLAND LAND CO. V. GINN, Ind., 43 N. E. Rep. 443.

127. VENDOR AND VENDEE—Sale of Land—Deficiency.—Equity has jurisdiction of an action by the purchaser of land based on mutual mistake or fraud to recover back part of the purchase money by reason of the tract containing less land than it was sold for.—BOSCHEN'S EX'X V. JURGEN'S EX'R., Va., 24 S. E. Rep. 890.

128. WILLS — Alterations.—The mere fact that the proofs may establish that, after the testator's death, alterations were made which did not materially change the will, and which were not of such a nature as to justify the presumption that he had revoked it in whole or in part, would not authorize the jury to return a verdict the effect of which would be to set aside the probate.—MCINTIRE V. MCINTIRE, U. S. S. C., 16 S. C. Rep. 814.

129. WITNESS—Effect of Impeachment.—That a witness' moral character and reputation for truth and veracity has been impeached does not require that the jury disregard his testimony if unsupported by corroborating evidence.—STATE V. VAN VLIET, Iowa, 66 N. W. Rep. 748.